



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 31, 2016
MAHS Docket No.: 16-001278
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on March 23, 2016, from Detroit, Michigan. Petitioner was represented by attorney [REDACTED], Petitioner's guardian and conservator. The Department of Health and Human Services (Department) was represented by Assistant Attorney General [REDACTED], [REDACTED], Assistance Payment Worker, and [REDACTED] Assistance Payment Supervisor, appeared and testified on the Department's behalf.

ISSUE

Did the Department properly deny Petitioner's August 27, 2015 application for Medicaid (MA), including long-term-care (LTC) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner resides in a nursing home facility.
2. On August 27, 2015, an application for MA LTC benefits was submitted to the Department on Petitioner's behalf by counsel (Exhibit A, pp. 1-6). The application states that Petitioner did not have an annuity and that she had not sold, given away, or transferred ownership in any asset (Exhibit A, p. 4).

3. On August 27, 2015, the Department sent a Verification Checklist to counsel requesting that requested proof be submitted by September 8, 2015 (Exhibit A, p. 7).
4. Based on responses to the VCL, on October 12, 2015, the Department sent Petitioner's counsel an addendum requesting additional verifications, including banks records for any active or closed accounts from October 1, 2010 to August 31, 2015. The addendum provided that "[i]f any requested accounts were closed, a letter from the bank institutions is required, with the Final Balance and subsequent expenditures." Verifications were due October 23, 2015. (Exhibit A, pp. 16-17.)
5. On October 29, 2015, the Department sent Petitioner's counsel a second addendum requesting additional documentation to process Petitioner's application by November 9, 2015, including verification of account ending in [REDACTED], which "should have the bank name, owner name and complete account number," and copies of original annuity contract and application of both [REDACTED] and [REDACTED] (Exhibit A, pp. 18-19).
6. On November 6, 2015, Petitioner's counsel requested an extension of the November 9, 2015 due date, and the Department extended the due date to November 20, 2015 (Exhibit A, pp. 36-38).
7. On November 19, 2015, Petitioner's counsel requested a second extension of the verification due date, and the Department extended the due date to November 30, 2015, advising him that this was his second and final extension (Exhibit A, p. 44).
8. On December 17, 2015, the Department forwarded the annuity documentation counsel submitted to its Office of Legal Affairs Trusts & Annuities Unit for evaluation (Exhibit A, pp. 46-67).
9. In a memo dated December 21, 2015, the Trusts and Annuities Unit sent the Department worker processing Petitioner's application a memo advising her that the [REDACTED] had not yet been annuitized and could be surrendered and that the cash surrender value of the annuity was an available, countable asset. A special notation indicated that, if the annuity was in payout status, additional information concerning the date of annuitization, value of annuity at annuitization, guarantee period, payment frequency, and beneficiaries was required. (Exhibit A, p. 68.)
10. On January 13, 2016, the Department sent Petitioner's counsel a Health Care Coverage Determination Notice denying Petitioner's application because she failed to verify information necessary to determine eligibility for the program. In the "comments from your specialist" section of the notice, the Department specified that the denial was due to failure to provide complete documentation of the [REDACTED]

██████████ and ██████████ and all bank records of ██████████ Account ending in ██████████ (Exhibit A, pp. 69-72).

11. On January 26, 2016, the Department received Petitioner's counsel's written request for hearing disputing the Department's actions.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The Department denied Petitioner's August 27, 2015 MA application because she failed to verify requested information, specifically she failed to provide complete documentation of the ██████████ and ██████████ and all bank records of the ██████████ account ending ██████████.

Checking and savings accounts are assets. BEM 400 (April 2015), p. 14. Asset eligibility is required for MA coverage under SSI-related MA categories, which applies to individuals who are aged, disabled or blind and seeking LTC benefits. BEM 400, p. 6; BEM 105 (October 2014), p. 1. At application, a client must verify that the value of the money in the account does not exceed the asset limit for SSI-related MA. BEM 400, pp. 1, 14, 16, 57. Also, verification of an excluded asset is necessary to establish that the asset should be excluded. BAM 130 (July 2015), p. 1. Therefore, evidence that an account is closed is required to establish that the account is not an asset.

The Department explained that, in connection with processing Petitioner's August 27, 2015 MA application, it became aware that Petitioner had a bank account with ██████████ ending ██████████. In the October 12, 2015 addendum to the VCL, the Department requested all bank records for active or closed accounts from October 1, 2010 to August 31, 2015 and specified that for any closed account a letter from the bank institution was required with the final balance and any subsequent expenditures (Exhibit A, p. 17). In the second addendum to the VCL sent to Petitioner's counsel on October 29, 2015, the Department specified that it required "verification (all pages) of account ending in

██████████. Verification should have bank name, owner name(s) and complete account number" (Exhibit A, p. 19). The verifications were due by November 9, 2015.

In this case, Petitioner's counsel requested an extension of the due date of the verifications on November 6, 2015 and on November 19, 2015. In accordance with Department policy, the Department granted counsel both extensions resulting in the verifications being due on November 30, 2015. BAM 130 (July 130), p. 7.

Evidence at the hearing established that the ██████████ ending in ██████ had closed. As of the November 30, 2015 verification due date, the only evidence concerning the account that Petitioner's counsel had submitted was a signature card for the account (Exhibit A, p. 65). Counsel argued at the hearing that the card, which established that Petitioner was the owner of the account and identified the account number, was responsive to the October 29, 2015 addendum. However, in the October 12, 2015 addendum, the Department had expressly requested that, for any closed accounts, a letter from the bank institution was required, with the final balance and any subsequent expenditures. Because the verification submitted did not establish that the account was closed, the Department properly concluded that the verification was insufficient.

The Department also relied on Petitioner's failure to verify the annuities to deny her application. The annuities had not been disclosed in Petitioner's application, but the Department became aware of them in processing the application, and in the October 29, 2015 addendum, it requested copies of original ██████████ and ██████████ annuity contracts and application for both policies. Petitioner's counsel advised the Department that he was having difficulty obtaining the documentation but provided certain documents pertaining to the annuities he was able to obtain by the November 30, 2015 due date.

The Department forwarded the documentation provided by Petitioner's counsel to its Trust and Annuities Unit, which issued a memo on December 21, 2015 informing the worker that, based on its review of the documents, if Petitioner could surrender the ██████████, the cash surrender value of the annuity was an available countable asset for Petitioner. On the other hand, if the annuity was no longer deferred and was in payout status, additional information was required.

The Department concluded, based on the memo from its Trust and Annuities Unit, which reviewed the documents, that Petitioner had provided insufficient verification of the annuities. However, at the hearing, Petitioner's counsel stated that both annuities had been cashed out, one in December 2014, the other in January 2015. The Department worker who processed the application testified that she was not aware that the annuities had been surrendered. While counsel argued that the bank statements for December 2014 and January 2015 that had been provided to the Department showed large deposits from the annuities, there was no evidence presented that counsel advised the Department that the annuities had been surrendered. To the contrary,

Petitioner's counsel indicated in the August 27, 2015 MA application that no asset listed in the application, which included annuities, had been sold, given away or transferred within the sixty months prior to application (Exhibit A, p. 4). Because counsel failed to put the Department on notice that annuities had been surrendered, the Department properly concluded that the submitted verifications of the annuities were inadequate.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it denied Petitioner's MA application.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

ACE/tlf



Alice C. Elkin

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

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