



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: December 6, 2016
MAHS Docket No.: 16-001745-RECON
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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, an in-person hearing was held on November 30, 2016, from Midland, Michigan. The Petitioner was represented by her attorney, [REDACTED] and Medicaid Specialist [REDACTED]. The Department of Health and Human Services (Department) was represented by Assistant Attorney General [REDACTED]. Witnesses for the Department were Family Independence Managers [REDACTED] and [REDACTED] Eligibility Specialist (now Community Resource Coordinator) [REDACTED] and Eligibility Specialist [REDACTED].

This matter was heard pursuant to an Order Granting Request for Rehearing/Reconsideration dated August 16, 2016. Administrative Law Judge Gary Heisler previously conducted a hearing on April 21, 2016, and issued a Decision on May 19, 2016. His Decision affirmed the Department. Petitioner filed a request for reconsideration on June 20, 2016. The request was granted in an order dated August 16, 2016.

ISSUE

Did the Department properly deny Petitioner's application for Medical Assistance (MA) Long Term Care (LTC) coverage?

FINDINGS OF FACT

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

1. On July 30, 2015, an application was submitted for LTC assistance for Petitioner. (Exhibit A Pages 1-8.)
2. In her application (Exhibit A Page 6) Petitioner reported the following income sources and amounts that she and her husband were receiving:
 - a. Social Security \$ [REDACTED]
 - b. Social Security \$ [REDACTED]
 - c. Disability \$ [REDACTED]
 - d. Rental Income \$ [REDACTED]
3. Along with her application, Petitioner submitted an asset declaration, reporting asset values as of June 16, 2015. (Exhibit A Page 1.)
4. On August 17, 2015, a Verification Checklist (VCL) was issued, with responses due by August 27, 2015. (Exhibit A Pages 9-11.)
5. A 10-day extension was given on August 27, 2015, and another extension was given on September 8, 2015, allowing Petitioner until September 18, 2015, to supply the requested documents. (Exhibit A Page 11.)
6. Because verification had not been received regarding an annuity from a life insurance company, on September 21, 2015, the Department mailed a Life Insurance Verification. (Exhibit A Pages 50-51.)
7. The Department received the completed Life Insurance Verification on October 6, 2015, (Exhibit A Pages 50-51) which stated the Cash Surrender Value was \$ [REDACTED] as of October 13, 2015.
8. A statement from [REDACTED] (Exhibit A Page 25) shows transactions in the savings account between June 30, 2015, and July 7, 2015, which notes a deposit from the Veterans' Administration of \$ [REDACTED] on July 1, 2015, and a low balance of \$ [REDACTED]
9. A statement from [REDACTED] (Exhibit A Page 26) shows transactions in the checking account from July 18, 2015 to July 24, 2015, which shows no deposits, and a low balance of \$ [REDACTED]
10. A Statement of Account from [REDACTED] (Exhibit A Page 27) shows a net surrender value of \$ [REDACTED] and a balance of \$ [REDACTED] as of April 30, 2009. Another Statement of Account (Exhibit A Page 31) shows a \$ [REDACTED] balance as of August 13, 2013, and a surrender value of \$ [REDACTED]

11. A Statement of Account from [REDACTED] dated October 31, 2014 (Exhibit A Page 21) shows Petitioner and her husband own 888 shares of stock in [REDACTED] and a stock price report (Exhibit A Page 22) shows the stock had a price of \$ [REDACTED] per share as of July 24, 2015, for a total value of \$ [REDACTED]
12. A statement dated June 30, 2015 (Exhibit A Page 17) gives a value of \$ [REDACTED] for Petitioner's IRA.
13. On November 12, 2015, the Department mailed an Initial Asset Assessment (IAA) Notice (Exhibit A Pages 52-54) determining that \$ [REDACTED] of the assets owned by Petitioner and her spouse could be kept by the Petitioner, and the spouse could keep one-half of the Initial Asset Assessment Amount, but not less than \$ [REDACTED] or more than \$ [REDACTED]. Combined, the couple could retain assets up to \$ [REDACTED]
14. The assets that were counted as part of the IAA (Exhibit A Page 66) were as follows, which, except for the annuity, correspond with the values provided in Petitioner's list of assets (Exhibit A Page 20):

a. Annuity	[REDACTED]
b. [REDACTED]	\$ [REDACTED]
c. [REDACTED]	\$ [REDACTED]
d. [REDACTED]	\$ [REDACTED]
[REDACTED]	[REDACTED]
f. Total	\$ [REDACTED]
15. A savings statement (Exhibit A Page 18) shows that a deposit is made monthly for the \$ [REDACTED] VA benefit into that account.
16. A checking statement (Exhibit A Page 19) shows that Social Security deposits of \$ [REDACTED] and \$ [REDACTED] are made monthly into that account.
17. Prior to applying for LTC, Petitioner and her spouse had attempted to change ownership of the annuity to their adult disabled daughter.
18. [REDACTED], which held the annuity, refused to change the ownership of the annuity.
19. On November 12, 2015, the Department mailed a Health Care Coverage Determination Notice (Exhibit A Pages 67-70), denying Petitioner's application for LTC, but providing her with coverage through the Medicare Savings Program beginning November 1, 2015.

20. On February 10, 2016, the Department received Petitioner's hearing request, protesting the denial of her LTC.
21. On February 10, 2016, the Department received statements of account representing the values of the various assets, and a summary of the assets prepared by the Petitioner's attorney. (Exhibit A Pages 71-93.) A Statement of Account (Exhibit A Page 88) for the annuity shows a Net Surrender Value of \$[REDACTED] and a statement balance of \$[REDACTED] as of July 30, 2015.

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.

BEM 402 (7/1/15) details the Department's "Special MA Asset Rules".

CLIENT'S ASSET ELIGIBILITY

Initial Eligibility

SSI-Related MA Only

Apply the following formula to:

- Each past month, including retro MA months, and the processing month for applicants, and
- The first future month for MA recipients.

Exception: Do **not** do initial eligibility when the SPECIAL EXCEPTION POLICY above applies.

Begin the client's Presumed Asset Eligible Period (below).

Initial Eligibility Formula

SSI-Related MA

The formula for asset eligibility is:

- The value of the couple's (his, her, their) countable assets for the month being tested.
- **MINUS** the protected spousal amount (see below).
- **EQUALS** the client's countable assets. Countable assets must **not** exceed the limit for one person in BEM 400 for the category(ies) being tested.

Exception: The client is asset eligible when the countable assets exceed the asset limit, if denying MA would cause undue hardship; see **UNDUE HARDSHIP** in this item. Assume that denying MA will **not** cause undue hardship unless there is evidence to the contrary.

PROTECTED SPOUSAL AMOUNT

MA Only

The protected spousal amount is the amount of the couple's assets protected for use by the community spouse. It is the **greatest** of the amounts in 1-4 below.

- \$23,844 effective January 1, 2015.
- \$23,448 effective January 1, 2014.
- \$23,184 effective January 1, 2013.
- \$22,728 effective January 1, 2012.
- \$21,912 effective January 1, 2010.
- \$21,912 effective January 1, 2009.
- \$20,880 effective January 1, 2008.
- \$20,376 effective April 1, 2007.

1. One-half the initial asset assessment amount (see **INITIAL ASSET ASSESSMENT**), but **not** more than:

- \$119,220 effective January 1, 2015.
- \$117,240 effective January 1, 2014.
- \$115,920 effective January 1, 2013.
- \$113,640 effective January 1, 2012.
- \$109,560 effective January 1, 2010.
- \$109,560 effective January 1, 2009.

- \$104,400 effective January 1, 2008.
- \$101,880 effective April 1, 2007.

2. The amount determined in a hearing per BAM 600.

In this case, the protected spousal amount would be at least \$[REDACTED] but not more than \$[REDACTED]. “Countable assets cannot exceed the applicable asset limit.” BEM 400 (7/1/15) p. 1. The Department is not to “count funds treated as income by a program as an asset for the same month for the same program.” BEM 400, p. 20. To put it another way, the Department is supposed to reduce the amount in an account by the amount of income deposited into that account that month, if the income is counted as income for the purpose of determining eligibility. The Department did not reduce the values of the checking and savings accounts by the amounts of Social Security and VA benefits that were deposited into those accounts in July 2015.

The IAA included the checking account at \$[REDACTED]. Income deposits of \$[REDACTED] and \$[REDACTED] are made monthly into that account. When those are subtracted from the checking account value, it leaves a value of \$[REDACTED] in that account. The savings account had a balance of \$[REDACTED] and that should have been reduced by the \$[REDACTED] in income deposited into the account. That leaves a balance of \$[REDACTED]. When the IAA is offset by the income amounts, it is reduced to \$[REDACTED]. That is still greater than the \$[REDACTED] that the couple is allowed to protect.

There was evidence that the couple receives rental income of \$[REDACTED] per month. There was no evidence as to the source of the income, or where the income was deposited. Consequently, the IAA will not be reduced by the rental income.

Petitioner’s argument is that the Department erred by counting the value of the annuity which was provided by the life insurance company. The documentation that was previously submitted to the Department (Exhibit A Pages 33-46) disclose that the annuity was purchased on April 20, 2009. The policy imposes a withdrawal charge (Exhibit A Page 45) that starts at 10% in the first year, and declines to 5% in years 6-10 after the annuity is purchased. A Statement of Account (Exhibit A Page 31) dated August 31, 2013, shows the account had a balance of \$[REDACTED] at that time, but had a net surrender value of just \$[REDACTED]. Another Statement of Account (Exhibit A Page 88) shows the account had a balance of \$[REDACTED] as of July 30, 2015, and a net surrender value of \$[REDACTED] at that time. However, the Department did not receive that statement until February 10, 2016. The net surrender value is \$[REDACTED] less than the balance, and if the IAA were reduced by that difference, it would have brought the IAA down to less than the limit. The ultimate question to be resolved is whether the IAA should be reduced by that amount, if the Department did not have that information at the time it calculated the IAA. Complicating the decision-making process is the fact that the “verification” provided by the insurance company was incorrect.

When the Department received the annuity verification (Exhibit A Pages 50-51) it reported a cash surrender value of \$ [REDACTED] as of October 13, 2015. It did not report the cash surrender value from July 2015, the month when the values of the other assets were determined. As explained in BAM 130 (7/1/15), p. 8, "Before determining eligibility, give the client a reasonable opportunity to resolve any discrepancy between his statements and information from another source." The Petitioner provided a statement (Exhibit A Page 71) showing the surrender value to be \$ [REDACTED] as of October 1, 2015, and a balance of \$ [REDACTED]. The logical conclusion is that the insurer used the current balance instead of the net surrender value in its verification.

There was testimony that an attempt had been made to transfer the annuity to the Petitioner's disabled adult daughter (see also Exhibit A Pages 7 and 9), and initially the parties focused the verification efforts on determining whether the ownership of the annuity still lay with the Petitioner and her spouse. It was discovered that the insurer never processed the change in ownership because they would not accept the direction of the Petitioner whose competency was in question. Then, when the insurer finally verified the annuity was still owned by the couple, it also "verified" the surrender value of the annuity but used the incorrect amount. The insurer was not asked to provide the values as of July 2015; it provided the values as of October 2015. In an asset declaration (Exhibit A Page 1) that listed the couple's assets as of June 16, 2015, the annuity was valued at \$ [REDACTED]. That conflicts with the value of \$ [REDACTED] used by the Department. While the difference might seem insubstantial, it could mean the difference between eligibility and ineligibility. With a conflict so significant, the Department had an obligation to give the Petitioner "a reasonable opportunity to resolve any discrepancy between his statements and information from another source."

DECISION AND ORDER

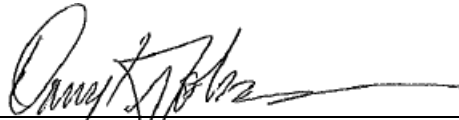
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated the Initial Asset Assessment, and when it issued the November 12, 2015, Health Care Coverage Determination Notice denying Petitioner's application for LTC.

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Recalculate Petitioner's Initial Asset Assessment, redetermine her eligibility for LTC during the month of July 2015, and provide her with benefits if she is determined to be eligible.

DJ/mc



Darryl Johnson
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

DHHS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Counsel for Respondent

[REDACTED]

Petitioner

[REDACTED]

Counsel for Petitioner

[REDACTED]