



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: June 14, 2017
MAHS Docket No.: 17-005489
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 [REDACTED] [REDACTED] from Detroit, Michigan. Petitioner was present for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

ISSUE

Did the Department properly close Petitioner's Medical Assistance (MA) benefits effective [REDACTED]

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 was an ongoing recipient of MA - Group 2 Spend-Down (G2S) benefits.
2. Petitioner's MA asset group size is one.
3. On [REDACTED] [REDACTED] [REDACTED], Petitioner submitted her Redetermination (DHS-1010). [Exhibit A, pp. 8-15.]
4. Included with the Redetermination, Petitioner submitted a Schedule K-1 (Form 1065) for the [REDACTED] tax year, which reported she was one of the partner's to the [REDACTED] [REDACTED] [REDACTED] and she had an ending capital account totaling \$ [REDACTED] [Exhibit A, p. 18.]

5. As a result of the Redetermination and her interest share in the L.L.C., the Department processed her ongoing eligibility for MA benefits and determined that she was no longer eligible for benefits due to her assets in the L.L.C. exceeding the asset limits.
6. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) informing her that she was no longer eligible for MA coverage effective [REDACTED], because the value of her countable assets is higher than allowed for this program. The determination notice also stated she was approved for the Medicare Savings Program (MSP) effective [REDACTED], ongoing. [Exhibit A, pp. 3-7.]
7. On [REDACTED], Petitioner filed a hearing request, protesting the Department's action. [Exhibit A, pp. 19-26.]

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.

Assets must be considered in determining eligibility for Supplemental Security Income (SSI)-related MA categories. BEM 400 (April 2017), p. 1. Asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400, p. 6. For all other SSI-related MA categories, the asset limit is \$2,000 for an asset group of one. BEM 400, p. 8.

In this case, Petitioner was an ongoing recipient of MA-G2S coverage and her group size is one. MA-G2S is an SSI-related Group 2 MA category. BEM 166 (April 2017), pp. 1-2. Therefore, in order to be eligible for MA-G2S coverage, Petitioner's countable assets cannot exceed the asset limit of \$2,000 for a group size of one. BEM 400, p. 8.

On [REDACTED], Petitioner submitted her Redetermination (DHS-1010) and included a Schedule K-1 (Form 1065) for the [REDACTED] tax year, which reported she was one of the partner's to the [REDACTED] and she had an ending capital account totaling \$[REDACTED] [Exhibit A, pp. 8-15 and 18.] The Department then processed her ongoing eligibility for MA benefits and determined that her share in the L.L.C. is a countable asset. The Department previously did not count her share in the L.L.C. as a countable

asset. Policy does state for SSI-related MA coverage, the Department counts any assets in a L.L.C. BEM 400, p. 54. As a result, the Department determined that she was no longer eligible for MA benefits effective [REDACTED], ongoing because her assets in the L.L.C. exceeded the asset limits. [Exhibit A, pp. 3-7.]

At the hearing, the Department presented an MA Assets budget for [REDACTED] which indicated that Petitioner has \$ [REDACTED] in liquid assets and that it exceeded the \$2,000 asset limit. [Exhibit A, p. 28.] It was not the exact amount, but the Department appeared to obtain this amount in liquid assets from the Schedule K-1 (Form 1065) for the [REDACTED] tax year and reported she had an ending capital account totaling \$ [REDACTED] [Exhibit A, pp. 8-15 and 18.] Nevertheless, for either amount, the Department would argue that it exceeds the asset limit of \$2,000 for a group size of one.

In response, Petitioner disputed that her assets exceeded the limits. She testified that she is one the owners of the L.L.C, but she is a minority owner. She testified that her share of the L.L.C. is only [REDACTED] percent. She testified the amount listed in the Schedule K-1 (Form 1065) represents her [REDACTED] percent share of two parcels of land, which is in name of the L.L.C. [Exhibit A, p. 28 and Exhibit 1, pp. 2-11.] She testified that she has no control of the asset because she is a member and she cannot take any said portion of her land without the majority members agreeing. She testified that she spoke to the individual who prepares her taxes in regards to how she can sell her share in the L.L.C. She was informed she would have to have someone buy her share at fair market price. She indicated that she sent an e-mail to the other owners that she would like out of the L.L.C., and no one would accept to buy her share because there is outstanding debt on the land. She did present evidence showing that there is debt owed. [Exhibit 1, pp. 8-12.] Petitioner further testified that at the time the Department determined she was no longer eligible, it was possible that the other owners would refuse consent for her to sell or spend her share of the assets. The Department did not rebut Petitioner's testimony. Based on this information, the undersigned Administrative Law Judge (ALJ) finds that Petitioner's asset in the L.L.C. is unavailable and, therefore, is excluded when determining her asset eligibility for MA benefits.

An asset must be available to be countable. BEM 400, p. 9. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p. 9. The Department assumes an asset is available unless evidence shows it is not available. BEM 400, p. 10. Availability might also be affected by joint ownership and efforts to sell or the possibility of domestic violence. BEM 400, p. 10.

Jointly owned assets are assets that have more than one owner. BEM 400, p. 11. An asset is unavailable if all of the following are true and an owner cannot sell or spend his share of an asset:

- Without another owner's consent.
- The other owner is not in the asset group.
- The other owner refuses consent.

BEM 400, p. 11.

The undersigned finds that Petitioner credibly established that she met the above exclusion in which her jointly owned asset in the L.L.C. is unavailable and, therefore, is not a countable asset. It is not disputed that Petitioner's L.L.C. is a jointly owned asset. Petitioner indicated that she cannot sell or spend her share of the asset because she has a minority share and would need the majority owners to agree. The other owners in the L.L.C. are not part of her asset group. Petitioner further testified that at the time the Department determined she was no longer eligible, it was possible that the other owners would refuse consent for her to sell or spend her share of the assets. Petitioner further testified that she attempted to sell her share to the other owners and no one would accept to buy her share because there is an outstanding debt on the land. [Exhibit 1, pp. 8-12.] The undersigned finds Petitioner's testimony and evidence sufficient to show that the other owners refused consent for Petitioner to sell or spend her portion of the asset because the other owners did not accept Petitioner's offer to buy her share due to the outstanding debt. [Exhibit 1, pp. 8-12.] As such, Petitioner's testimony and her evidence shows that she met the above exclusion in which her jointly owned asset in the L.L.C. is unavailable.

In sum, Petitioner's asset share in the L.L.C. is unavailable because she is an owner that cannot sell or spend her share in the L.L.C. (i) without the other L.L.C. majority owner's consent; (ii) the other owners in the L.L.C. are not in the asset group; and (iii) her testimony and evidence was sufficient to show that the other L.L.C. owners would refuse consent. BEM 400, p. 11.

Accordingly, the undersigned finds that Petitioner's jointly owned asset in the L.L.C. is unavailable in accordance with Department policy. BEM 400, p. 11. The Department is ordered to redetermine her MA eligibility and exclude her share in the [REDACTED] when determining her asset eligibility for MA benefits effective [REDACTED], ongoing.

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 did not act in accordance with Department policy when it closed Petitioner's MA benefits effective [REDACTED].


Accordingly, the Department's MA 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. Reinstate Petitioner's MA benefits effective [REDACTED];
2. Redetermine Petitioner's MA eligibility for [REDACTED], ongoing;
3. Exclude and do not count Petitioner's assets in the [REDACTED] when determining her asset eligibility for MA benefits effective [REDACTED], ongoing;

4. Issue supplements to Petitioner for any MA benefits she was eligible to receive but did not from [REDACTED], ongoing; and
5. Notify Petitioner of its decision.

EJF/jaf



Eric J. Feldman
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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
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