



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]
[REDACTED]

Date Mailed: July 10, 2017
MAHS Docket No.: 17-006104
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; 42 CFR 438.400 to 438.424; 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], from Detroit, Michigan. Petitioner was represented by his Authorized Hearing Representative (AHR)/mother, [REDACTED]. Petitioner was also present for the hearing. 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], due to excess assets?

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], the AHR submitted Petitioner's Redetermination (DHS-1010). [Exhibit B, pp. 1-4.]
4. Included with the Redetermination, the AHR submitted Petitioner's asset verification, which consisted of an investment account. The AHR was the

conservator for Petitioner's investment account, which had an ending market value of \$ [REDACTED] for the period of [REDACTED]. [Exhibit B, p. 5.]

5. In order for the AHR to access the money, she would have to petition the court and present the Petitioner's need, which the Department interpreted as making the investment account an available asset. [Exhibit A, pp. 1 and 4.]
6. As a result of the Redetermination and submission of Petitioner's asset verification, the Department processed his ongoing eligibility for MA benefits and determined that he was no longer eligible for benefits due to the value of his investment account exceeding the asset limits.
7. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) informing him that he was no longer eligible for MA coverage effective [REDACTED], because the value of his countable assets is higher than allowed for this program. [Exhibit A, pp. 6-9.]
8. On [REDACTED], the AHR filed a hearing request, protesting the Department's action. [Exhibit A, pp. 2-3, and Exhibit B, p. 6.]

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 his 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], the AHR submitted Petitioner's Redetermination (DHS-1010). [Exhibit B, pp. 1-4.] Included with the Redetermination, the AHR submitted Petitioner's asset verification, which consisted of an investment account. The AHR was the conservator for Petitioner's investment account, which had an ending market value of \$ [REDACTED] for the period of [REDACTED]. [Exhibit B, p. 5.] The Department then processed his ongoing eligibility for MA benefits and determined that the investment account was an available asset. [Exhibit A, p. 4.] As a result, the Department determined that he was no longer eligible for MA benefits effective [REDACTED] [REDACTED] ongoing because the value of his investment account exceeded the asset limits. [Exhibit A, pp. 3-7.]

In response, the AHR argued that the investment account was not an available asset. As part of the evidence record, the AHR provided a letter from her attorney dated [REDACTED], which summarized her argument. It read that the attorney's office represents the AHR as the guardian and conservator of Petitioner, a developmentally disabled adult. [Exhibit A, p. 4.] The letter further stated that the AHR is under court order to conserve and protect the assets of Petitioner, she does not own the assets which she is conservator of nor is she entitled to use them for her own benefits. [Exhibit A, p. 4.] The letter stated that the AHR can only access the funds after petitioning the court and receiving a court order to use them for specific and limited use on Petitioner's behalf. [Exhibit A, p. 4.]

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.

For SSI-related MA only, the Department gives the asset a \$0 countable value when it has no current market value as shown by one of the following:

- Two knowledgeable appropriate sources (example: realtor, banker, stockbroker) in the owner's geographic area state that the asset is not salable due to a specific condition (for example, the property is contaminated with heavy metals). This applies to any assets listed under:
 - Investments.
 - Vehicles.
 - Livestock.
 - Burial Space Defined.
 - Employment and Training Assets.
 - Homes and Real Property (see below).
- In addition, for homes, life leases, land contracts, mortgages, and any other real property, an actual sale attempt at or below fair market value in the owner's geographic area results in no reasonable offer to purchase. The asset becomes salable when a reasonable offer is received. Count an asset that no longer meets these conditions.

For applicants, an actual sale attempt to sell must have started at least 90 days prior to application and must continue until the property is sold. For recipients, the asset must have been up for sale at least 30 days prior to redetermination and must continue until the property is sold. An actual sale attempt to sell means the seller has a set price for fair market value, is actively advertising the sale in publications such as local newspaper, and is currently listed with a licensed realtor.

BEM 400, pp. 13-15.

Additionally, except for U.S. Savings bonds, the value of other investments is the amount the asset is selling for:

- Use the closing price for publicly traded stocks.
- Use the bid price or net asset value (NAV) for mutual funds.
- Use the bid price for bonds.

BEM 400, pp. 24-25. If a security was not paid for in full at the time of purchase (bought on margin), the securities firm has made a loan to the buyer. BEM 400, p. 25. Deduct the balance owed from the price if there is written proof that the balance owed must be repaid when the security is sold. BEM 400, p. 25.

Finally, other nonpermanent documents are generally considered current if dated within 60 days before your eligibility determination. BAM 130 (April 2017), p. 2. Older documents may be used if available information indicates the document remains current and there have been no changes in circumstances. BAM 130, p. 2.

Based on the foregoing information and evidence, the Department properly determined that Petitioner was over the asset limit for MA benefits.

The first issue that the undersigned has to address is whether the investment account provided by the AHR meets the definition of a “current” verification. Generally, nonpermanent documents are considered current if dated within 60 days before your eligibility determination. BAM 130, p. 2. However, the investment account was not dated within 60 days before his eligibility was determined. Nonetheless, policy further states that older documents may be used if available information indicates the document remains current and there have been no changes in circumstances. BAM 130, p. 2. The undersigned finds that the investment account is an older document, but that it can be used as a “current” verification because the available information indicated in this document remains current; and there has been no changes in circumstances. BAM 130, p. 2. As such, the undersigned finds that the investment account provided for the evidence record is sufficient verification of Petitioner’s assets.

Second, the undersigned finds that the investment account did not meet the requirements of an SSI-related MA non-salable asset, which means it cannot be given a \$0 countable value. See BEM 400, pp. 13-14.

Third, the undersigned does not find Petitioner's argument persuasive that the investment account is not an available asset. Instead, the undersigned does find that the investment account is an available asset. Even though it is difficult for the AHR to access the investment account on behalf of Petitioner, she ultimately can access these funds after petitioning the court and receiving a court order as stated in the attorney's letter. [Exhibit A, p. 4.] The undersigned agrees, therefore, with the Department's interpretation that the investment account is an available asset. As stated above, available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p. 9. Again, the AHR, on behalf of Petitioner, has a legal right to use the funds in the investment account by petitioning the court, which makes this an available asset. Because the investment account is an available asset, the verification indicated that the asset had an ending market value of \$ [REDACTED] for the period of [REDACTED]. [Exhibit B, p. 5.] The value of the investment account clearly exceeds the \$2,000 MA asset limit for a group size of one. See BEM 400, pp. 8 and 24-25.

Accordingly, the undersigned finds that the Department properly closed Petitioner's MA benefits because he was over the asset limit. See BEM 400, pp. 1-10 and 24-25.

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 acted in accordance with Department policy when it closed Petitioner's MA benefits effective [REDACTED].

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

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]
[REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]

[REDACTED]
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