



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 7, 2017

MAHS Docket No.: [REDACTED]

17-007450

Agency No.: [REDACTED]

Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly close the Petitioner's Medical Assistance?

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 a recipient of Healthy Michigan Plan.
2. On [REDACTED], the Department issued a Health Care Coverage Determination Notice closing the Petitioner's Health Michigan Plan (HMP) because he is eligible for Medicare and receives RSDI. The Notice also indicated that the Petitioner was not eligible for Ad Care (full coverage MA) due to his income exceeding the program income limit and also found Petitioner was not eligible for the Group 2 Senior deductible program due to excess assets. Exhibit B

3. The Petitioner provided the Department a copy of his [REDACTED] Life Insurance Policy number [REDACTED] which noted a cash surrender value of [REDACTED] as of [REDACTED]. Exhibit A
4. The Department found that the Petitioner's assets were [REDACTED], and determined his assets exceeded the Group 2 S asset limit of [REDACTED]. Exhibit C
5. The Petitioner receives RSDI from the Social Security Administration in the amount of [REDACTED]
6. The Petitioner requested a timely hearing on [REDACTED], protesting 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.

In this case, the Petitioner was an ongoing recipient of the Healthy Michigan Plan (HMP) medical assistance. The Department closed the Petitioner's HMP because he is a recipient of Social Security RSDI due to his disability. The HMP program is not available for individuals receiving RSDI and who are qualified for Medicare or are qualified for other Medicaid programs. BEM 137 (October 1, 2016), p. 1.

In addition, the Department, prior to closing the Petitioner's MA, reviewed other programs to determine if Petitioner was eligible under another program as required by Department policy. An ex parte review (see glossary) is required before Medicaid closures when there is an actual or anticipated change, unless the change would result in closure due to ineligibility for all Medicaid. When possible, an ex parte review should begin at least 90 days before the anticipated change is expected to result in case closure. The review includes consideration of all MA categories. See BAM 115 and 220. BEM 166 (April 1, 2017), p.1

The Department looked at the Ad Care program, which is available to income eligible persons who are disabled, or over 60 years of age. BEM 163 (July 1, 2017), p.1. The Petitioner's RSDI income is [REDACTED] per month and the income limit for the Ad Care Program for a group of one person is [REDACTED] a month. RFT 242 (April 2017), p. 1. Thus, the Department correctly determined that Petitioner was not income eligible for the Ad Care Program.

The last program the Department reviewed was the Group 2 Seniors program which has an asset limit of [REDACTED] for a group of one person. BEM 400 (July 2017), p. 8. An Asset is defined as Cash, personal property, or any item subject to ownership that is not real property, (examples: currency, savings account and vehicles and real property. BEM 400, p.1. BEM 400 states that a life insurance policy is an asset if it can generate a Cash Surrender Value. A policy is the owner's asset. For SSI related MA only, the cash surrender value is the amount of money the policy owner can get by canceling the policy before it matures or before the insured dies. It may be titled the cash surrender value (CSV) or the cash value. In addition, it is the amount of money the **owner** can get. The insurance policy provided by the Petitioner to the Department does not define or indicate who the owner of the policy is, or otherwise indicate the Petitioner is the owner.

Department policy further requires:

- Tables included with a life insurance policy **are not considered accurate.** Verification of the CSV should be either a current notice (within the year) from the company or by contacting the company for the current value. BEM 400, p. 44.

When determining the cash surrender value, no evidence was presented that the Department verified the current cash surrender value of the Petitioner's policy, but instead relied on the table presented in the original policy. The Department was provided a copy of the policy issued on [REDACTED] and the table attached to the original policy. The table attached to the original policy did not reflect the true cash surrender value and was not an updated current notice within one year. The table did not accurately represent the asset value of the policy because, as testified to by Petitioner, he had previously taken a loan on the policy. Had the Department verified further, as required by Department policy, it would have determined a different cash surrender value of [REDACTED]. The Petitioner provided an updated value after the Department closed his medical assistance on [REDACTED]. The correct cash surrender value of [REDACTED] would have made Petitioner asset eligible to be considered for the Group 2 S deductible program. The failure to verify the actual cash surrender value was an error and was not in conformance with Department policy found in BEM 400. In addition, the Department should have verified that the Petitioner is the owner of the policy (which information does not appear on the face of the policy given to the Department).

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 the Petitioner's Medical Assistance without verifying the cash surrender value of his insurance policy, and that he was the owner.

DECISION AND ORDER

Accordingly, the Department's decision is:


AFFIRMED with respect to the Department's closure of Petitioner's HMP medical assistance and the Department's denial of the AD Care program based upon excess income.

REVERSED with respect to its denial of the Group 2 S program.

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. The Department shall reinstate the Petitioner's Medical Assistance effective the date of closure.
2. The Department shall determine the Petitioner's ongoing MA eligibility and provide the Petitioner written notice of its determination.

LF/



Lynn M. Ferris

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]

Petitioner

[REDACTED]
[REDACTED]
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