



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: April 24, 2017
MAHS Docket No.: 17-003554
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], from Detroit, Michigan. The Petitioner was represented by her Authorized Hearing Representative (AHR)/Power of Attorney (POA), [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly deny Petitioner's Medical Assistance (MA) application 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. On [REDACTED], Petitioner applied for a nursing home MA application. Exhibit A, p. 1.
2. Petitioner's asset and fiscal group size is one.
3. On [REDACTED], Petitioner provided verification of her revocable living trust, dated [REDACTED]. Exhibit A, pp. 36-48.

4. On [REDACTED], the caseworker emailed a copy of Petitioner's trust to the "Office of Legal Services, Trust & Annuities Unit" (trust & annuities unit) for a Request for Trust/Annuity Evaluation (DHS-1517). Exhibit A, pp. 1 and 32-33.
5. On [REDACTED], the Department sent Petitioner a Verification Checklist (VCL), which was due back by [REDACTED]. Exhibit A, pp. 27-30.
6. On [REDACTED], the caseworker received a Trust/Annuity Evaluation (DHS-1518) back from the trust & annuities unit deeming that all assets contained in the trust are countable. Exhibit A, pp. 1 and 34-35.
7. Petitioner's Case Comments – Summary indicated that the second VCL was due by [REDACTED], (extension request). Exhibit A, p. 31.
8. Petitioner's following assets were received by the Department: (i) a life insurance policy from [REDACTED] Insurance - AARP; (ii) a whole life insurance policy from [REDACTED] Life Insurance Company; (iii) the [REDACTED] checking account (money held by others); and (iv) a Quit Claim Deed of Petitioner's homestead to "The [REDACTED] Trust, dated [REDACTED].]" Exhibit A, pp. 49-56.
9. The Department determined that following assets were countable against Petitioner: (i) the homestead was in the trust name; (ii) a life insurance policy from [REDACTED] Insurance – [REDACTED]; (iii) a whole life insurance policy from [REDACTED] Insurance Company; and (iv) the [REDACTED] checking account (money held by others). Exhibit A, p. 1.
10. The Department calculated Petitioner's total countable assets to be \$ [REDACTED] which exceed the \$ [REDACTED] asset limit for an MA group size of one. Exhibit A, pp. 1 and 13.
11. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice notifying her that her MA application was denied effective [REDACTED], ongoing, due to excess assets. Exhibit A, pp. 5-8.
12. On [REDACTED], Petitioner's AHR filed a hearing request, protesting the MA denial. Exhibit A, pp. 2-3 and 67.

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 Michigan, individuals who are aged (age 65 or older), blind, disabled, entitled to Medicare, or formerly blind or disabled are eligible for MA under Supplemental Security Income (SSI)-related categories. BEM 105 (October 2016) p. 1. Assistance with long-term care costs is available under MA SSI-related categories for individuals who meet the financial and nonfinancial eligibility criteria. BEM 163 (July 2013), pp. 1-2; BEM 164 (January 2016), pp. 1-2; BEM 166 (July 2013), pp. 1-2.

Asset eligibility is required for SSI-related MA categories. BEM 400 (January 2017), p. 6. 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 any individual in a long-term care (LTC) facility, eligibility for MA is subject to a \$2,000 asset limit applicable to an asset group of one. BEM 211 (January 2016), pp. 6-8; BEM 400 (January 2017), p. 8; BEM 402 (April 2014), p. 3. Long-term care (LTC) means being in a nursing home that provides nursing care and other categories as listed in the Bridges Policy Glossary (BPB). BPB 2015-015 (October 2015), p. 39. It was not disputed that Petitioner was in an LTC facility and that her group size was one.

In the present case, Petitioner applied for a nursing home MA application dated [REDACTED]. Exhibit A, p. 1. Upon processing Petitioner's MA application, the Department determined that Petitioner had four countable assets, which consisted of her homestead (in the trust name), two life insurance policies (in Petitioner's name), and a bank account (money held by others). The Department argued that Petitioner's four countable assets had a total value of \$ [REDACTED] which exceeded the \$2,000 asset limit for a MA group size of one. Exhibit A, pp. 1 and 13. As such, the Department denied Petitioner's MA application due to excess assets, which the AHR disputed. The undersigned will address each asset below.

Homestead

First, the Department argued that Petitioner's homestead, which was in the trust name, was a countable asset. The AHR disputed the Department's findings, including the calculation of the homestead value of \$ [REDACTED] because the home was in poor condition and not worth the amount the Department calculated. The undersigned agrees with the Department's determination that the homestead was a countable asset and that it properly calculated its value to be \$ [REDACTED]

On [REDACTED], Petitioner provided verification of her revocable living trust, dated [REDACTED]. Exhibit A, pp. 36-48. On [REDACTED], the caseworker emailed a copy of Petitioner's trust to the trust & annuities unit for a Request for Trust/Annuity Evaluation (DHS-1517). Exhibit A, pp. 1 and 32-33. On [REDACTED], the

caseworker received a Trust/Annuity Evaluation (DHS-1518) back from the trust & annuities unit deeming that all assets contained in the trust are countable. Exhibit A, pp. 1 and 34-35.

Under Department policy, the determination of whether a trust is a countable asset requires that the trust be evaluated to determine if it is a Medicaid trust, and, if so, whether it is a revocable or irrevocable trust. BEM 401 (January 2017), pp. 3-5 and 11-14.

A Medicaid trust is a trust that meets conditions 1 through 5 below:

1. The person whose resources were transferred to the trust is someone whose assets or income must be counted to determine MA eligibility, an MA post-eligibility patient-pay amount, a divestment penalty or an initial asset assessment (IAA) amount. A person's resources include his spouse's resources (see definition).
2. The trust was established by:
 - The person.
 - The person's spouse.
 - Someone else (including a court or administrative body) with legal authority to act in place of or on behalf of the person or the person's spouse, or an attorney, or adult child.
 - Someone else (including a court or administrative body) acting at the direction or upon the request of the person or the person's spouse or an attorney ordered by the court.
3. The trust was established on or after August 11, 1993.
4. The trust was not established by a will.
5. The trust is not described in Exception A, Special Needs Trust, or Exception B, Pooled Trust in this item.

BEM 401, pp. 5-6.

In this case, the evidence established that Petitioner's trust was a Medicaid trust. Exhibit A, pp. 34-48.

Determining whether assets in a Medicaid trust are countable depends on whether the Medicaid trust is revocable or irrevocable. In this case, Section 3 of the trust agreement states that the trust can be amended and revoked, which therefore, means that Petitioner's trust is a revocable trust. Exhibit A, pp. 33 and 39, and see BEM 401, pp. 4-5. Because this is a revocable trust, policy states that the Department will count as the person's countable asset the value of the countable assets and the countable income in the principal of a revocable trust. BEM 401, p. 12. In the present case, Petitioner's

homestead was in the trust name, which makes it countable in accordance with Department policy. Exhibit A, p. 49, and BEM 401, p. 12.

To determine the fair market value of real property, the Department uses the State Equalized Value (SEV) on current property tax records multiplied by two. BEM 400, pp. 30-31. Real property is land and objects affixed to the land such as buildings, trees and fences. BEM 400, p. 30. For SSI-related MA, the value is the equity value. BEM 400, p. 31. Equity value is the fair market value minus the amount legally owed in a written lien provision. BEM 400, p. 31. There is no evidence that a lien is present in this case. As part of the evidence record, the Department presented Petitioner's homestead "██████████ Summer Property Tax Bill," which showed the SEV was \$██████████ Exhibit A, p. 50. The Department then took this amount and times it by two, which resulted in the trust (because the homestead is in the trust name) having a countable value of \$██████████ The undersigned finds that the Department properly calculated the value of the trust in accordance with Department policy. BEM 400, pp. 30-31 and 61.

Life insurance policies

Second, the Department also argued that both of Petitioner's life insurance policies were countable assets.

For SSI-Related MA only, a life insurance policy is a contract between the policy owner and the company that provides the insurance. BEM 400, p. 42. The company agrees to pay money to a designated beneficiary upon the death of the insured. BEM 400, p. 42. Pure Endowment Life Insurance Contracts pay out on a specific date in the future, not just when the beneficiary dies, and does not meet the definition of life insurance for Medicaid. BEM 400, p. 42.

Cash surrender value (CSV) means the amount of money the policy owner can get by canceling the policy before it matures or before the insured dies. BEM 400, p. 42. It may be titled the cash surrender value or the cash value. BEM 400, p. 42. Face value (FV) means the amount of the basic death benefit contracted for at the time the policy is purchased. BEM 400, p. 42.

For SSI-Related MA only, a life insurance policy is an asset if it can generate a CSV. BEM 400, p. 43. A policy is the policy owner's asset. BEM 400, p. 43.

- A policy's value is its CSV. A policy can generate a CSV, but have a CSV of zero. Such a policy is an asset with zero value.
- Generally, term insurance does not have a CSV. Whole or straight life policies generate a CSV. Policies called graded term or level term may have a CSV and must be verified and counted as an asset.
- The CSV usually increases over time. A loan against a policy reduces its CSV. Pre-death payment of the death benefit might reduce the CSV. See Accelerated Life Insurance Payments in BEM 500 about the payments received.

- CSV and FV are not the same thing.
- 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. 43.

Additionally, BEM 400 does include life insurance exclusions. Some or all of the value of insurance might be excluded to pay for funeral expenses. BEM 400, p. 43. The Department also excludes the entire cash surrender value when the total face values of all policies a policy owner has for the same insured are \$1,500 or less. BEM 400, p. 44. Exceptions for not counting face value include: (i) term insurance that does not generate a CSV; (ii) burial insurance; and (iii) endowment policies. See BME 400, pp. 1-15 and 42-43.

In this case, Petitioner does not meet any of the exceptions for the life insurance policies to be excluded as a countable asset. See BEM 400, pp. 43-44. Instead, the undersigned finds that both life insurance policies were countable as follows: (i) a life insurance policy from ██████████ Insurance – AARP, with a cash surrender value of \$██████████ and (ii) a whole life insurance policy from ██████████ Insurance Company, with a cash surrender value of \$██████████ Exhibit A, pp. 55-56. When both life insurance policies are added together, the resulting countable asset is \$██████████ It should be noted that the Department calculated the total life insurance value to be \$██████████ which was approximately twenty dollars less than the undersigned's calculation. Exhibit A, p. 13. However, the undersigned finds this calculation to be harmless error as Petitioner's life insurance countable values still exceeds the \$2,000 asset limit for a group size of one.

Money held by others

Third, the Department argued that Petitioner had a checking account, held by the AHR, which was also a countable asset.

For SSI-related MA, money held by others is considered to be a cash asset, which is countable asset. BEM 400, pp. 14-15. For example, Sally does not have a bank account. She puts money in her mother's checking account, but it is not a joint account. See BEM 400, p. 15.

In this case, the AHR provided a bank checking account statement for the period of ██████████, to ██████████. Exhibit A, pp. 51-54. The bank account was in the AHR's name; however, the AHR acknowledged that funds in this account belonged to Petitioner, and she was holding it for her. Based on this information, the checking account is a countable asset because the AHR was holding the money for the Petitioner, "money held by other." See Exhibit A, pp. 51-54, and BEM 400, pp. 14-15.

The Department calculated the asset value to be \$██████████ Exhibit A, p. 13. The Department obtained this amount by taking the ending balance of \$██████████ and then minus Petitioner's Social Security deposit of \$██████████ which was deposited on ██████████ See Exhibit A, pp. 51-52. The Department properly excluded Petitioner's Social

Security Income because policy states that the Department does not count funds treated as income by a program as an asset for the same month for the same program. BEM 400, p. 21. The Social Security deposit would have been counted as income for [REDACTED], the month it was deposited, thus, the Department properly excluded this amount.

But the AHR argued that there was a payment of \$ [REDACTED] in Petitioner's account on [REDACTED], which should have also been excluded, similar to the Social Security income. Exhibit A, p. 52. The payment was back-pay for veteran's benefits. See BEM 503 (January 2017), p. 35. Such a payment is defined as an accumulated benefit, which is a one-time payment of accumulated non-MDHHS benefits issued to cover a retroactive period of time or to cover a future period of time (example: RSDI, Veterans Benefits, UI Benefits, Workers Compensation). BPB 2015-015, p. 1. However, the undersigned disagrees. For Medicaid, lump-sums and accumulated benefits are income in the month received. BEM 400, p. 16 and BEM 500 (January 2016), p. 7. Thus, the accumulated benefit would have been considered income for [REDACTED], the month in which the funds were received. However, effective [REDACTED], ongoing, any funds remaining in the checking account from the accumulated benefit, would have to be counted as an asset. As such, because the application occurred in [REDACTED], all of the funds in the checking account were countable assets, except for Petitioner's Social Security income. Therefore, the Department properly calculated Petitioner's "money held by others" asset value to be \$ [REDACTED] in accordance with Department policy. BEM 400, pp. 14-16 and BEM 500, p. 7.


Accordingly, the undersigned finds that the value of Petitioner's countable assets, which includes the homestead (in the trust name), the life insurance policies, and the checking account (money held by others), exceeds the \$2,000 asset limit for an MA group size of one. Exhibit A, pp. 1 and 13. As such, the Department properly denied Petitioner's MA application effective [REDACTED], in accordance with Department policy.

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 denied Petitioner's MA application effective [REDACTED], due to excess assets, in accordance with Department policy.

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

DHHS

[REDACTED]
[REDACTED]
[REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

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