



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

Date Mailed: June 14, 2017  
MAHS Docket No.: 17-004323  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Alice C. Elkin**

**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 May 30, 2017, from Detroit, Michigan. Petitioner was represented by [REDACTED], her authorized hearing representative (AHR). The Department of Health and Human Services (Department) was represented by Rene Colvin, Assistance Payment Supervisor, and Nikai Williams, Assistance Payment Worker.

**ISSUE**

Did the Department properly deny Petitioner's [REDACTED], 2017 application for Medicaid (MA), with retroactive coverage to January 2017?

**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 has resided in a long-term care (LTC) facility since October 3, 2015.
2. The LTC facility charges Petitioner about \$8,500 monthly for her care and residence in the facility. Through December 2016, Petitioner used her private funds to pay the LTC facility rates.
3. In January 2017, Petitioner paid the LTC facility \$1,700 for her care and services.

4. On [REDACTED] 2017, Petitioner applied for MA with retroactive coverage to January 2017 (Exhibit A, pp. 6-12).
5. In January 2017, Petitioner received net monthly Retirement, Survivors and Disability Insurance (RSDI) income of \$1,454.50 (Exhibit A, p. 19).
6. In January 2017, Petitioner had the following cash funds: (i) \$540.33 in a patient trust at the LTC facility; (ii) \$1,554.60 in a [REDACTED] account ending - [REDACTED] and (iii) \$180.00 in a [REDACTED] account ending - [REDACTED]. Petitioner also had a [REDACTED] checking account ending - [REDACTED] the lowest balance in the account in January 2017 was \$346.08. (Exhibit A, pp. 17-20, 32, 36.)
7. On February 22, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice notifying her that she was not eligible for MA because “the applicant did not apply for this person” and the value of her countable assets was higher than allowed for the program (Exhibit A, pp. 39-42).

### **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.

The AHR disputes the Department’s denial of Petitioner’s [REDACTED] 2017 MA application with request for retroactive MA coverage to January 1, 2017. The February 22, 2017 Health Care Coverage Determination notified Petitioner that her application for MA was denied because “the applicant did not apply for this person” and the value of her countable assets was higher than allowed under the program. At the hearing, the Department did not address the denial on the basis that the “applicant did not apply for this person.” A review of the application shows that it was completed by a representative of the nursing home in which Petitioner resided but it was signed by Petitioner and identified Petitioner as the patient and applicant. The Department did not identify any basis for denial of Petitioner’s application on the basis that she did not apply. Therefore, the Department has failed to satisfy its burden of showing that it acted

in accordance with Department policy in denying the application to the extent the denial was due to this reason.

At the hearing, the Department testified that denial of Petitioner's application was due to the value of Petitioner's assets exceeding the asset limit for MA eligibility and focused on this explanation in supporting the denial.

Petitioner, who is over age 65 and resides in an LTC facility, may be eligible for MA under an SSI-related category if she can establish asset eligibility. BEM 400 (January 2017), p. 1; BEM 105 (October 2016), p. 1. For SSI-related MA, the asset limit is \$2000 for an individual in long-term care. BEM 400, p. 8; BEM 211 (January 2016), p. 8. Asset eligibility for MA 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.

At the hearing, the Department testified that it concluded that the value of Petitioner's assets exceeded the applicable MA limit based on the value of her cash assets. Money in checking and savings accounts, as well as an LTC patient trust fund, are assets. BEM 400, pp. 1, 14-15. The value of a checking, savings, or money market account is the lowest balance in the month asset eligibility is being determined. BEM 400, p. 15. The value of the LTC patient trust account is the money held by the nursing facility for the resident. BEM 400, p. 17.

In concluding that Petitioner had excess cash assets, the Department explained that it added the sum of Petitioner's cash in her two money market accounts (\$1,554.60 and \$180), the lowest balance in her checking account in January 2017 (\$346.08), and patient trust (\$540.33), and subtracted her social security benefits deposited in her checking account in January 2017 (\$1,454.50). See BEM 400, p. 21 (requiring that current income be excluded from the calculation of asset value for the same month for the same program). Although this calculation results in assets totaling \$1,166.51, the Department testified that in determining Petitioner's cash assets it added back in to its asset calculation the \$1,700 Petitioner paid the LTC facility in January 2017. Based on this calculation, Petitioner had assets in excess of \$2,000.

The AHR does not dispute that Petitioner's cash in her savings, money markets, and patient trust were assets. However, she argues that the Department improperly considered the \$1,700 payment made by Petitioner to the LTC facility in January 2017 as an asset.

In order for an asset to be countable, it must be available and not an excluded asset. BEM 400, p. 2. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p. 9. An asset converted from one form to another, continues to be an asset. BEM 400, p. 2. Department policy provides that, for ongoing MA recipient, excess assets may be disposed of, without divestment, through payment of medical expenses, living costs, and other debts. BEM 400, p. 6.

In this case, Petitioner paid the \$1,700 to the LTC facility as partial payment for services provided to her by the facility in January 2017. Petitioner applied her assets towards her medical expenses and living costs, a legitimate expense. Once Petitioner paid the LTC facility the \$1,700, the funds were no longer available to her. Therefore, the Department did not act in accordance with Department policy when it concluded that the \$1,700 Petitioner paid to the LTC facility continued to be a countable asset to her. When this amount is removed from the Department's calculation of Petitioner's asset eligibility, the value of Petitioner's assets is less than \$2,000. As such, Petitioner is asset-eligible for MA. Thus, the Department did not act in accordance with Department policy when it denied Petitioner's MA application on the basis that the value of her assets exceeded the income limit for eligibility.

The Department argued that it added back the \$1,700 Petitioner paid the LTC facility as required in a January 4, 2017 policy clarification letter sent by the Department to nursing homes. The Department's argument is misplaced. The letter advised the facilities that retro MA was available to a resident only if there were *unpaid* medical expenses and when a resident paid the facility in full for a month, the facility's charges were not covered by retroactive eligibility and, thus, the nursing facility could not refund the client's payment for services provided and then bill MA for the same services. The clarification letter also explained that, if a resident made a partial payment to the nursing facility and the resident has retro MA eligibility for the same time period, the nursing facility *could* bill MA for the difference between the resident's partial payment and the nursing facility's MA rate. The letter does not support the Department's position that it was required to add the \$1,700 Petitioner paid to the LTC facility in the calculation of her asset eligibility. (Exhibit A, pp. 43-46.)

In this case, the Petitioner's \$1,700 January 2017 payment to the LTC facility was considerably less than the monthly charge she paid as a private payer, which the AHR testified was \$8,500. The AHR explained that the \$1,700 that Petitioner paid the facility in January 2017 was Petitioner's estimated patient pay amount in anticipation of her approval for MA coverage. Because Petitioner still had an outstanding balance to the LTC facility for services provided to her in January 2017, Petitioner had unpaid medical expenses to the LTC facility. Thus, if she is otherwise eligible for MA, Petitioner would have outstanding medical expenses in January 2017 for purposes of eligibility for retro MA.

### **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 denied Petitioner's MA application, with request for retro coverage.

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. Reregister and reprocess Petitioner's [REDACTED] 2017 MA application and retro MA application;
2. Provide Petitioner with MA coverage she is eligible to receive from January 1, 2017 ongoing; and
3. Notify Petitioner in writing of its decision.

ACE/tlf



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**Alice C. Elkin**  
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

**Via Email:**

MDHHS-Wayne-82-Hearings@michigan.gov  
BSC4 Hearing Decisions  
EQAD  
M. Best  
MAHS

**Via First-Class Mail:**

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Authorized Hearing Rep.**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]