



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: June 7, 2018  
MAHS Docket No.: 18-003941  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

**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 June 4, 2018, from Detroit, Michigan. The Petitioner was represented by ██████████, her legal guardian. The Department of Health and Human Services (Department) was represented by Alicia Jorgenson, Long Term Care (LTC) Eligibility Specialist, and Adele Sumption, Hearing Facilitator.

**ISSUE**

Did the Department properly deny Petitioner LTC Medicaid (MA) coverage?

**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 had been an ongoing Supplemental Security Income (SSI)-Medicaid and Medicare Savings Program (MSP) recipient.
2. On February 20, 2018, the Department issued a Health Care Coverage Determination Notice (HCCDN) informing Petitioner that she was no longer eligible for SSI-MA coverage nor MSP coverage, effective April 1, 2018.
3. On February 28, 2018, the Department received a completed Application for Health Care Coverage Patient of Nursing Facility for Petitioner.
4. On March 19, 2018, the Department issued a Verification Checklist (VCL) requesting proof of Petitioner's Husband's (Husband) ██████████ 401k value as

of November 3, 2017, and current; Husband's account statements for the [REDACTED] [REDACTED] account ending in 5449 and [REDACTED] [REDACTED] account ending in 0251 showing the balance of November 3, 2017, and any other bank accounts he owns; current account statements for the same accounts listed above; Petitioner's account statement for a [REDACTED] account ending in 6361 with the balance of November 3, 2017, listed; proof of ownership and value of any assets owned by Husband as of November 3, 2017, and current; proof of marriage; and proof of the Trust and its value from November 3, 2017, and its current value owned by Husband; all documents were due by March 29, 2018.

5. Petitioner and Husband have been separated since 2002; they are not divorced.
6. Husband is a resident of an Adult Foster Care facility and has a legal guardian.
7. Petitioner's Guardian contacted Husband's Guardian seeking proof of the above-listed documents; Husband's Guardian refused, indicating that Husband was not legally obligated to provide this information because of their long separation.
8. On March 30, 2018, the Department issued a HCCDN indicating that Petitioner was denied the Initial Asset Assessment and LTC MA based upon a failure to provide the requested proofs.
9. On April 10, 2018, the Department received a hearing request from Petitioner's Guardian on behalf of Petitioner disputing the denial of LTC MA coverage.

### **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 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, Petitioner was denied LTC MA coverage based upon her Husband's Guardian's refusal to cooperate in providing asset information. Federal regulations and State policy provide that all resources held by either the institutionalized spouse, the community spouse, or both, shall be considered to be available to the institutionalized spouse. BEM 402 (April 2018); BEM 400 (April 2018); 42 CFR §1396r-5(c)(2)(A). A

community spouse is a spouse that is not currently in or expected to be in a hospital or long term care facility for 30 or more consecutive days. BEM 402, p. 2. No evidence was presented that Husband is in a long term care facility as defined by policy; therefore, he is considered a community spouse. BPG Glossary (April 2018), pp. 39-40. The only circumstance where Petitioner might be eligible for LTC MA coverage despite Husband's Guardian's refusal to cooperate is if Petitioner (or Petitioner's Guardian on her behalf) assigns her right to spousal support to the Department, the Department may then bring a support proceeding against the community spouse if the client is unable, or the Department determines an undue hardship. Federal regulations governing the treatment of income and resources for institutionalized spouses provide that

The institutionalized spouse shall not be ineligible for reason of resources determined under paragraph (2) to be available for the cost of care where—

- (A) The institutionalized spouse has assigned to the State any rights to support from the community spouse;
- (B) The institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment, but the State has the right to bring a support proceeding against a community spouse without such assignment; or
- (C) The State determines that denial of eligibility would work an undue hardship.

42 CFR 13986r-5(3). In this case, neither party presented evidence of an assignment of Petitioner's rights to the Department, a determination by the Department of a lack of ability to execute an assignment, or a determination by the Department of undue hardship. Since no evidence was presented on any of these items, these options are not considered here, but may be options for the parties in the future. In addition, since no evidence was presented of these options, the Department properly sought verification of assets of Petitioner's Husband. Department policy provides that upon a refusal of a community spouse to verify assets, the institutionalized spouse's LTC MA application must be denied. BEM 402 (April 2018), p. 11. Therefore, the Department properly denied Petitioner LTC coverage.

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 LTC MA application.

**DECISION AND ORDER**

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



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**Amanda M. T. Marler**  
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) 763-0155; 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**

Fiona Wicks  
MDHHS-Ottawa-Hearings

**Authorized Hearing Rep.**

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**Petitioner**

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