



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] TX [REDACTED]

Date Mailed: August 15, 2018
MAHS Docket No.: 18-005779
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, a telephone hearing was held on July 25, 2018, from Lansing, Michigan. Petitioner was represented by his authorized hearing representative [REDACTED]. The Department of Health and Human Services was represented by Eric Carlson and Samantha Johnson.

ISSUE

Did the Department of Health and Human Services (Department) properly deny Petitioner's application for Medical Assistance (MA)?

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], 2018, the Department received Petitioner's application for Medical Assistance (MA). Exhibit A, pp 1-5.
2. On Petitioner's [REDACTED], 2018, application form, he reported having two life insurance policies. Exhibit A, p 3.
3. Department records indicate that during a routine eligibility interview, the Department discovered that an application for a conservatorship had been filed as well as documents necessary to convert the life insurance policy to a burial contract. Exhibit A, p 5.

4. The case value of the life insurance policies was \$2,796.05 and \$3,361.75 as of February of 2018. Exhibit A, p 6.
5. On April 12, 2018, the Department received verification that the life insurance policy has been closed. Exhibit A, p 11.
6. On May 16, 2018, the Department notified Petitioner that he was not eligible for Medical Assistance (MA) effective February 1, 2018, based on countable assets. Exhibit A, pp 15-16.
7. On May 25, 2018, the Department received Petitioner's request for a hearing protesting the denial of his Medical Assistance (MA) application.

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 means cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. Personal property is any item subject to ownership that is not real property. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (January 1, 2018), pp 1-7.

A life insurance policy is a contract between the policy owner and the company that provides the insurance. The company agrees to pay money to a designated beneficiary upon the death of the insured. 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. 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 or the cash value. Department of Health and Human Services Bridges Eligibility Manual (BEM) 400 (January 1, 2018), pp 43-44.

On [REDACTED], 2018, the Department received Petitioner's application for MA benefits. Petitioner reported having life insurance with a cash surrender value and that it was his intention to close his life insurance policy converting it to a non-countable funeral contract. On April 12, 2018, the Department received verification that the life insurance policy had been closed. On May 16, 2018, the Department notified Petitioner that he was not eligible for Medical Assistance (MA) for February of 2018, based on countable assets.

Petitioner's representative argues that the life insurance policy should not have been considered a "countable" asset in February of 2018 because the cash value of the life insurance policy was not "available" for Petitioner. Petitioner's representative testified that the cash value of the life insurance policy was unavailable to Petitioner from when she applied to become guardian over Petitioner's affairs until the conservatorship was approved by the probate court because neither she nor Petitioner had access to the policy.

An asset must be available to be countable. Available means that someone in the asset group has the legal right to use or dispose of the asset. The Department will assume an asset is available unless evidence shows it is not available. An asset remains available during periods in which a guardian or conservator is being sought. This includes situations such as:

- A person's guardian dies and a new guardian has not been appointed yet.
- A court decides a person needs a guardian, but has not appointed one yet.
- A person is unconscious and his family asks the court to appoint a guardian.

BEM 400, p 10.

A life insurance policy is not unavailable because there is a lengthy process that must be followed in order to receive the cash surrender value. Further, Department policy specifically requires that an asset be considered countable while a court considers whether a guardian should be appointed.

It was not disputed that the cash surrender value of the life insurance policy exceeded the limit for eligibility for MA benefits (\$2,000). This Administrative Law Judge finds that the life insurance policy was "available" to Petitioner in February of 2018, and was countable.

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 found Petitioner to be ineligible for Medical Assistance (MA) in February of 2018.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/hb



Kevin Scully
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

Pamela Wells
915 Diana St.
Ludington, MI 49431

Mason County, DHHS

BSC3 via electronic mail

D. Smith via electronic mail

EQADHShearings via electronic mail

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED], TX [REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED], TX [REDACTED]