



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED] MI [REDACTED]

Date Mailed: August 3, 2018
MAHS Docket No.: 18-006212
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 August 2, 2018, from Lansing, Michigan. Petitioner is in Long Term Care (LTC). Petitioner was represented by her Guardian, and son, [REDACTED]. The Department of Health and Human Services (Department) was represented by Adele Sumpton, HF, and Jessica Tomberlin, ES.

ISSUE

Did the Department properly deny Petitioner LTC MA eligibility for December 2017 and January 2018?

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], 2017 Petitioner applied for LTC MA in Kent County.
2. On January 24, 2018 Petitioner's application was transferred to Ottawa County DHHS after Kent experienced difficulties due to a computer/Bridges error problem, and after filing a ticket for resolution.
3. On February 22, 2018 Ottawa County finished processing Petitioner's application and determined that Petitioner was excess assets due to real property held in an irrevocable trust, with Petitioner's Guardian as Trustee and beneficiary.
4. Upon notice, on February 2, 2018 Petitioner's Guardian and beneficiary deeded the irrevocable trust asset, the home, back to the settlor, his parents.

5. After the transfer, the home was exempt and not countable under LTC policy, and Petitioner was eligible for LTC beginning February 2018. December 2017 and January 2018 were denied.
6. On June 11, 2018 Petitioner's Guardian requested a hearing regarding the months of December 2017 and January 2018, on the grounds that had the Department not exceeded its standard of promptness, Petitioner would have been advised sooner, and Petitioner would then have transferred sooner and would have had eligibility sooner, either December 2017, and/or January 2018.
7. The standard of promptness in this matter was 45 days or in this case, January 16, 2018.

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.

Specific policy applicable to the case here is found at BAM 105, 115, 220; and BEM 402, 400, BPG.

First, this ALJ wishes to note that the issue of the legality of making a transfer by the Trustee who was also the Beneficiary on an irrevocable trust back to the settlor was not examined.

In this case, Petitioner argues that had the Department not exceeded its standard of promptness, Petitioner would have been advised no later than the 45-day period—approximately January 16, 2018, or sooner, that the irrevocable trust was a countable asset, and Petitioner would then have transferred or dissolved the trust sooner thereby triggering eligibility sooner, either December 2017, and/or January 2018.

Petitioner is correct. The Department does not dispute these facts. However, Petitioner offered no authority—law or policy—that would entitle her to prevail under these facts. The SOP is generally construed as a right without a remedy. Administrative Law Judges (ALJ) have no authority to grant benefits where the facts at the time would not support

eligibility. Simply put, the transfer was not made until 2/22/18; an ALJ has no authority to grant benefits where an individual is not otherwise eligible.

In the alternative, Petitioner's argument is essentially one that it is only fair and the equitable thing to do as the Department erred. However, it is well-settled in Michigan that Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the department policy set out in the program manuals. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940); see also *Delegation of Hearing Authority*, August 9, 2002, per PA 1939, Section 9, Act 280. Furthermore, administrative adjudication is an exercise of executive power rather than judicial power and restricts the granting of equitable remedies. *Michigan Mutual Liability Co.*, supra.

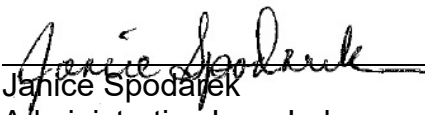
Further, it is noted that Petitioner cannot demand performance based on contract law principles. It is generally recognized that the DHHS is a governmental agency, and the LTC Medicaid is a welfare benefit. This is no contractual quid-pro-quo. The DHHS is under no obligation to fully educate or inform all applicants of the many policies and laws applicable to the possibilities that any one application may trigger; such would be an onerous burden and the state does not pay case workers to perform this function along with managing hundreds of cases.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the action taken by the Department was supported by evidence and Department policy.

DECISION AND ORDER

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

JS/nr



Janice Spodarek
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
12185 James St Suite 200
Holland, MI
49424

Ottawa County DHHS- via electronic mail

BSC3- via electronic mail

D. Smith- via electronic mail

EQAD- via electronic mail

Petitioner

[REDACTED], MI