



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: April 19, 2019  
MAHS Docket No.: 19-002307  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Landis Lain

**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 April 10, 2019, from Lansing, Michigan. The Petitioner was represented by her Guardian, Attorney [REDACTED] ([REDACTED]). [REDACTED] appeared as a witness for Petitioner. Petitioner is in Long Term Care and did not appear at the hearing. The Department of Health and Human Services (Department or Respondent) was represented by Assistant Attorney General Tonya Jeter (P55352). Brenda Drownicki, Hearings Facilitator and Ann Durkee, Long Term Care Eligibility Specialist, appeared as witnesses on behalf of Respondent.

Respondent's Exhibit A pages 1-23 were admitted as evidence.

**ISSUE**

Did the Department properly cancel Petitioner's Medical Assistance (MA) Program benefits?

**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 was a Medical Assistance benefit recipient.
2. Petitioner's Medical Assistance – long-term care case was scheduled for a review in October 2018.

3. Petitioner had Medical Assistance coverage through October 31, 2018, when the case was triggered to close for negative action for failure to provide verification information.
4. On [REDACTED] [REDACTED] 2018, a long-term care application was registered with the Department and an electronic data management.
5. The application was submitted by Petitioner's guardian and made no mention of a life insurance policy.
6. Historical information and bridges did have a policy through [REDACTED] with verification on file dated August 2014 showing a face value of \$ [REDACTED] and a cash surrender value of \$ [REDACTED]
7. On November 15, 2018, a verification checklist was issued for current verification of the policy with a due date of November 26, 2018.
8. On November 26, 2018, the Department received current verification of the [REDACTED] policy showing a cash surrender value of \$ [REDACTED]
9. The [REDACTED] policy exceeded the asset limit of \$2,000.00, and Petitioner had a low balance in her [REDACTED] account of \$ [REDACTED] on [REDACTED] [REDACTED] 2019.
10. On [REDACTED] [REDACTED] 2018, a new application was submitted for which a copy of the \$ [REDACTED] check from [REDACTED] dated [REDACTED] [REDACTED] 2018, was provided.
11. Also provided was a copy of Petitioner's bank statement for spend-down verification which showed that the check was deposited on [REDACTED] [REDACTED] 2018, into Petitioner's revocable trust account at which time she was then asset eligible and approved for [REDACTED] December 2018 ongoing.
12. On November 30, 2018, the Department sent Petitioner a healthcare coverage determination notice indicating that as of November 1, 2018, Petitioner was not eligible for Medical Assistance benefits because the value of her countable assets was higher than allowed for the program.
13. On February 28, 2019, Petitioner's Guardian filed a request for hearing to contest the negative action.
14. On March 14, 2019 the Michigan Administrative Hearing System received the hearing summary and attached documents.

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R

400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever they believe the decision is incorrect. The Department provides an administrative hearing to review the decision and determine its appropriateness in accordance to policy. This item includes procedures to meet the minimum requirements for a fair hearing. BAM 600, page 1.

In this case, Petitioner is a single woman. She is a group size of one person for purposes of Medical Assistance benefit eligibility determination. Under BEM, Item 400, an eligible Medical Assistance recipient may not possess in excess of \$2,000 in assets.

**Assets** mean 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 (examples: currency, savings accounts and vehicles). BEM, Item 400, page 1. Countable assets **cannot** exceed the applicable asset limit. Not all assets are counted. An asset is countable if it meets the availability tests and is **not** excluded. Available means that someone in the asset group has the right to use or dispose of the asset. BEM, Item 400, page 5. All types of assets are considered for SSI-related MA. BEM, Item 400, page 2. For Medicare Savings Programs (BEM 165) and QDWI (BEM 169) the asset limit is:

- . \$4,000 for an asset group of one.
- . \$6,000 for an asset group of two.

For all other SSI-related MA categories, the asset limit is:

- . \$2,000 for an asset group of one.
- . \$3,000 for an asset group of two. BEM, Item 400, page 5.

Petitioner's allegation that the application processing was delayed is a compelling equitable argument to be excused from the Department's program policy requirements.

However, equity powers are not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Health and Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the Department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).


This Administrative Law Judge finds that for the entire month of November 2018, Petitioner possessed in excess of \$2,000.00 in countable, available assets based upon the low balance of \$509.00 in Petitioner's PNC account + \$2,273.45 in cash surrender value of her MetLife policy. The Department's decision must be upheld.

### **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 has established by the necessary competent, material and substantial evidence on the record that it acted in accordance with Department policy when it denied Petitioner's application for Medical Assistance (Long Term Care) because Petitioner possessed in excess of \$2,000.00 in countable available assets for the month of November 2018.

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

LL/hb

  
\_\_\_\_\_  
**Landis Lain**  
Administrative Law Judge  
for Robert Gordon, 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

**Counsel for Respondent**

Tonya Celeste Jeter  
Heff Division Williams Bldg  
3rd floor  
Lansing, MI 48909

**DHHS**

Vivian Worden  
21885 Dunham Road  
Clinton Twp., MI 48036

Macomb County (District 12), DHHS

BSC4 via electronic mail

D. Smith via electronic mail

EQADHShearings via electronic mail

**Petitioner**

[REDACTED], MI [REDACTED]

**Counsel for Petitioner**

[REDACTED] MI [REDACTED]