



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: May 3, 2019
MOAHR Docket No.: 19-002873
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 May 3, 2019, from Detroit, Michigan. Petitioner appeared and was represented by Authorized Hearing Representative (AHR) [REDACTED]. Also appearing on Petitioner's behalf was Petitioner's wife, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED] Family Independence Manager. During the hearing, a 22-page packet of documents was offered and admitted as Exhibit A, pp. 22-1.¹

ISSUE

Was the Department decision to deny Petitioner's December 10, 2018, application for Medicaid (MA) benefits based on a determination that the value of Petitioner's countable assets exceeds the limit for program eligibility in compliance with law and Department policy?

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, Petitioner submitted to the Department an application for MA benefits. Accompanying the application were a number of supporting documents. Additionally, on the application, Petitioner indicated that he held a life insurance policy.

¹ The packet was prepared and presented in reverse numerical order, and that reverse order was retained in order to avoid confusion of the record.

2. The Department failed to take any action with respect to Petitioner's application until March 2019.
3. On March 1, 2019, the Department issued to Petitioner a Verification Checklist (VCL) requesting information related to Petitioner's assets and income. Relevant to this matter, the VCL requested the cash surrender value of the life insurance policy. Exhibit A, pp. 9-8.
4. On March 7, 2019, the Department received the requested verification related to the cash surrender value of Petitioner's life insurance policy. The letter from the insurance company stated that the cash surrender value was \$9,182.56. Exhibit A, p. 10.
5. On March 13, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that he was not eligible for MA benefits because the value of his countable assets exceeded the limit for program eligibility. Exhibit A, pp. 17-13.
6. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's delay in processing and determination of ineligibility.
7. While this matter was pending, Petitioner assigned his rights to the life insurance policy over to a funeral home. Petitioner's actions put Petitioner under the asset limit. The Department approved Petitioner for MA benefits, effective [REDACTED], 2019.

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.

In this case, Petitioner submitted to the Department a [REDACTED], 2018, application for MA benefits under the Extended-Care program. No action was taken with respect to Petitioner's application until [REDACTED], 2019, when the Department issued to Petitioner a VCL requesting information related to a life insurance policy. Petitioner returned the requested information on [REDACTED], 2019. That documentation showed that Petitioner's

life insurance policy had a cash surrender value of over \$9,000. On March 13, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that his application was denied as a result of the Department's finding that the value of Petitioner's countable assets exceeded the limit for program eligibility. On [REDACTED], 2019, Petitioner submitted a hearing request objecting to both the delay in processing and the ultimate conclusion of ineligibility.

The Extended-Care program is an SSI-related MA category with an asset limit for program eligibility of \$2,000. BEM 164 (April 2017), pp. 1-2; BEM 400, pp. 7-8. A life insurance policy is a countable asset if it can generate a cash surrender value, which can also be called simply a cash value. BEM 400, p. 44. 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. BEM 400, p. 44. However, the life insurance policy can be transferred to a funeral plan being considered a divestment and excluded from countable assets if it is designated to pay for burial expenses. BEM 400, p. 47; BEM 405 (October 2018), p. 10.

For the months of December 2018, January 2019, and February 2019, the value of Petitioner's countable assets was, at all times, in excess of the limit for program eligibility by a substantial margin. The cash surrender value of the life insurance policy was over \$9,000, and the limit was \$2,000. Thus, the Department's conclusion that Petitioner was ineligible for that time period must be affirmed.

Petitioner's argument for reversal is compelling but ultimately sounds in equity. After the Department finally processed the application, Petitioner diligently and successfully removed those assets from being countable and became asset eligible. Before the end of March 2019, Petitioner was able to assign the life insurance policy over to a funeral home, thereby reducing his countable assets to below the threshold, and become eligible for MA benefits, effective March 1, 2019, ongoing. Petitioner promptly resolved the asset issue as soon as it was identified by the Department. Thus, Petitioner's argument is that had the application been timely processed, the asset issue could have been resolved earlier, resulting in Petitioner receiving MA coverage for the months of December 2018, January 2019, and February 2019.

When the Department is processing an application for MA benefits and receives an Asset Declaration Patient and Spouse (DHS Form 4574-B), the Department is required to complete the assessment and mail the client a notice within 45 days. BAM 115 (October 2018), p. 17. The Department clearly failed to meet its obligation to promptly process Petitioner's application and conceded as much at the hearing. However, any remedy for the delay would be equitable in nature. The undersigned Administrative Law Judge does not have any equitable powers and cannot deviate from the statutory requirements, no matter how compelling the situation. The fact remains that for the months Petitioner is seeking coverage that was denied, the value of Petitioner's assets exceeded the limit for program eligibility. Thus, the law compels the decision to deny coverage for those months, regardless of the demonstrated fact that proper processing

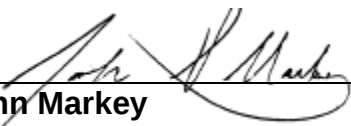
by the Department would have set in motion Petitioner's transfer of the assets months before it actually happened.

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 determined that Petitioner was asset ineligible for MA benefits for the months of December 2018, January 2019, and February 2019.

DECISION AND ORDER

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

JM/cg



John Markey
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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Iosco-Hearings
D. Smith
EQAD
BSC2- Hearing Decisions
MOAHR

Petitioner –

Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]

Authorized Hearing Rep. –

Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]