



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]
[REDACTED], MI [REDACTED]

Date Mailed: June 7, 2019
MOAHR Docket No.: 19-003065
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 May 22, 2019, from Lansing, Michigan. The Petitioner was represented by Attorney [REDACTED]. Witnesses [REDACTED] and [REDACTED] appeared to testify on Petitioner's behalf. The Department of Health and Human Services (Department or Respondent) was represented by Assistant Attorney General Geraldine Brown (P67601). Lisa Williams, Long Term Care Lead Worker, appeared to testify on behalf of the Respondent.

ISSUE

Did the Department properly determine that Petitioner was ineligible 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. Petitioner was a MA-Long Term Care Program beneficiary.
2. Petitioner entered Long Term Care [REDACTED] [REDACTED] 2017.
3. On December 15, 2017, the Department sent Petitioner and his Authorized Hearings Representative a Health Care Coverage Determination Notice indicating that Petitioner's MA case would close effective January 1, 2018 because Petitioner

failed to return redetermination forms or to provide required proofs needed for eligibility determination.

4. No request for hearing was filed within 90 days.
5. On [REDACTED] [REDACTED] 2018, Petitioner's Authorized Representative filed a new Medical Assistance application.
6. On March 26, 2018, the Department denied the application indicating that Petitioner had excess assets.
7. On March 26, 2018, the Department sent Petitioner Notice of denial indicating that Petitioner had two unreported life insurance policies that had not been previously counted.
8. On [REDACTED] [REDACTED] 2018, Petitioner's Authorized Representative filed another Medical Assistance application.
9. No Retroactive Medical Assistance application was filed on Petitioner's behalf.
10. On July 9, 2018, the Department approved Petitioner for Medical Assistance Program benefits.
11. On March 11, 2019, Petitioner's Authorized Hearings Representative filed a Request for Hearing to contest the lack of eligibility for Medical Assistance for the months of January 1, 2018-June 30, 2018.
12. On April 5, 2019, the Michigan Office of Administrative Hearings and Rules received a copy of 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.

The client or AHR has **90 calendar days from the date of the written notice of case action to request a hearing**. The request must be received in the local office within the 90 days; see Where to File a Hearing Request, found in this item. Note: Unless otherwise stated elsewhere, computation of time for the purposes of administrative hearings is determined as follows:

- Time is measured in calendar days.
- The computation of time begins on the day after the act, event, or action occurs. (The day on which the act, event, or action occurred is not included.)
- The last day of the time period is included, unless it is a Saturday, Sunday, State of Michigan holiday, or day on which the State of Michigan offices are closed. (In such instances, the last day of the time period is the next business day.) BAM 600, page 6

In this case, Petitioner's request for hearing was untimely. The Department sent Petitioner Notice of Case Action December 15, 2017. Petitioner's Representative filed a request for hearing on March 11, 2019, well beyond the 90-day time period. As such, this Administrative Law Judge lacks jurisdiction to hold this hearing. The request for hearing must be **DISMISSED**.

In the alternative, Petitioner is a single man. He 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 that the application processing was delayed because the Authorized Representative is no longer competent 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).

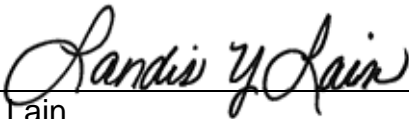
The Department has established by the necessary competent, material and substantial evidence on the record that it acted in accordance with Department policy when it denied Petitioner's application for Medical Assistance (Long Term Care) because Petitioner failed to provide redetermination information in a timely manner and because Petitioner possessed in excess of \$2,000.00 in countable available assets until July 2018 after his excess assets were spent down.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, decides that the Department of Human Services has established by a preponderance of evidence that Petitioner failed to provide verification information at redetermination in a timely manner and because Petitioner possessed in excess of \$2,000.00 in countable, available assets for purposes of Medical Assistance Eligibility. The Department's actions must stand as appropriate.

Accordingly, **Petitioner's Request for Hearing is DISMISSED for lack of timely filing of the Request for Hearing.** The Department's actions must be 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 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

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