



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]
MI [REDACTED]

Date Mailed: July 22, 2019
MOAHR Docket No.: 19-003911
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 June 13, 2019, from Lansing, Michigan.

Petitioner was represented by Attorney [REDACTED] of [REDACTED] Michigan. Petitioner did not call any witnesses. Petitioner's Exhibits 1-6 were admitted as evidence.

The Department of Health and Human Services (Department) was represented by Geraldine Brown, AAG. Sandy Doughrity, LTC Specialist appeared as a witness. Respondent's Exhibits A-J were submitted into the record. Respondent called Rebecca Ferrill, Assistance Payments Supervisor, appeared as a witness.

ISSUE

Did the Department properly deny Petitioner's application for Medical Assistance (MA) based upon its determination that Petitioner possessed excess assets?

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] [REDACTED] 2019, the Department contends that Petitioner submitted an application for Medicaid (MA). Petitioner contends that she filed her application on [REDACTED] [REDACTED] 2018.

2. Petitioner and her spouse had previously made a combined asset declaration on [REDACTED] 2018, made pursuant to LTC application for Petitioner's spouse. At that time, the combined assets were \$180,374.53. Exhibit A. On [REDACTED], 2018, Petitioner's spouse passed away.
3. In addition to the asset declarations, there was a promissory note that had a value of \$105,000. Exhibit C. There was considerable confusion as to the value and role of the note in the application process as Petitioner claimed that the promissory note was amended at the time of her application and was only for \$52,000. Exhibit D.
4. The Department indicated that the promissory note was a countable asset if it has FMV (or divestment if it has no FMV). Funds from the note are being deposited into a separate account not previously accounted for.
5. In May of 2018, Petitioner held \$136,835, not counting the promissory note.
6. After a number of extensions, the VCL final verifications were due on March 4, 2019.
7. On March 4, 2019 the Department issued a Health Care Determination Notice stating that Petitioner's application was denied for two reasons: Petitioner had excess assets, and, Petitioner failed to give proof of necessary information to verify that the assets had been spent down. Exhibit A.7. No notice was issued indicating which assets lacked verification and/or which assets were still over asset limit or what amount.
8. The Department failed to notify Petitioner's counsel of the denial, or Petitioner's family.
9. On April 10, 2019, Petitioner filed a hearing request.

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). Petitioners 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.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL

400.105. Department policies are found in the Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Title XIX of the Social Security Act, commonly referred to as “The Medicaid Act,” provides for Medical Assistance services to individuals **who lack the financial means to obtain needed health care**. 42 U.S.C. §1396. (Emphasis added)

The Medicaid program is administered by the federal government through the Centers for Medicaid and Medicare Services (CMS) of the Department of Health and Human Services (HHS). The state and federal governments share financial responsibility for Medicaid services. Each state may choose whether or not to participate in the Medicaid program. Once a state chooses to participate, it must operate its Medicaid program in accordance with mandatory federal requirements, imposed both by the Medicaid Act and by implementing federal regulations authorized under the Medicaid Act and promulgated by HHS.

Participating states must provide at least seven categories of medical services to persons determined to be eligible Medicaid recipients. 42 USC §1396a(a)(10)(A), 1396d(a)(1)-(5), (17), (21). One of the seven mandated services is *nursing facility services*. 42 USC §1396d(a)(4)(A).

For Medical Assistance eligibility, the Department has defined an asset as “any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.” NDAC 75-02-02.1-01(3). Under both federal and state law, an asset must be “actually available” to an applicant to be considered a countable asset for determining Medical Assistance eligibility. *Hecker*, 527 N.W.2d at 237 (On Petition for Rehearing); *Hinschberger v. Griggs County Social Serv.*, 499 N.W.2d 876, 882 (N.D.1993); 42 U.S.C. § 1396a(a)(17)(B); 1 J. Krauskopf, R. Brown, K. Tokarz, and A. Bogutz, *Elderlaw: Advocacy for the Aging* § 11.25 (2d ed. 1993). Yet, “actually available” resources “are different from those *in hand*.” *Schweiker v. Gray Panthers*, 453 U.S. 34, 48, 101 S.Ct. 2633, 2642, 69 L.Ed.2d 460 (1981) (emphasis in original). NDAC 75-02-02.1-25(2) explains: Only such assets as are actually available will be considered. Assets are actually available when at the disposal of an applicant, recipient, or responsible relative; when the applicant, recipient, or responsible relative has a legal interest in a liquidated sum and has the legal ability to make the sum available for support, maintenance, or medical care; or when the applicant, recipient, or responsible relative has the lawful power to make the asset available, or to cause the asset to be made available. Assets will be reasonably evaluated.... See also 45 C.F.R. § 233.20(a)(3)(ii)(D).

Medicaid is the joint state/federal program that provides payment for covered health care services for eligible ***indigent*** individuals. MCL 400.105, *et seq*; 42 USC 1396a, *et seq*. Medicaid is a means tested program. If Medicaid applicants have sufficient assets, income or insurance to pay for health care they do not qualify for the Medical Assistance program. Indigent for purposes of Medicaid eligibility in Michigan means that a one-person household may retain limited 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.

General verification policy and procedure is found in the BAM.

This case has a voluminous amount of evidence addressing multiple assets, verifications. In addition, the Department's processing of the application was complicated by having lost Petitioner's file 2 times, and having given Petitioner's case file more than one case number. In addition, on January 18, 2019, the Bureau of Legal Affairs with MDHHS sent an email to the county stating that the Oakland County failed to include in the hearing packet relevant material addressing the determination made by Oakland County. This ALJ not only agrees with that statement but did not find that the evidence of record clearly identified how the Department treated each asset spent down submitted by Petitioner.

In all eligibility cases, individuals applying for welfare benefits have the burden of proof by a preponderance of evidence. However, the Department initially has the burden of going forward to establish that what was done and what policy and procedure supports the action taken.

After a careful review of the credible and substantial evidence, this ALJ finds that the Department has failed to meet its burden of going forward to establish with credible evidence what the reason was for denying Petitioner's application based on excess assets. The Department contends that Petitioner was in excess asset status, and/or, failed to deliver necessary verifications. The notice of denial, which the Department failed to send to the proper parties, states only "The value of your countable assets is higher than allowed for this program" and "You did not give proof of information your local office asked for. See your verification checklist for a list of the items you were asked to provide..." Exhibit F.7. The verification comments section lists over 11 items. Nothing in the denial addresses Petitioner's actual assets.

What is clear here is that there are multiple verifications and assets. What is NOT clear is how the Department treated each asset and each verification. The denial notice fails to state with any specificity which verification(s) are missing, if any. Nor does the Department notice state how the Department processed the asset verifications which were turned in. That is, the evidence here fails to establish with credible evidence as to the calculation that the Department made on each asset verification submitted by Petitioner. Federal and state notice requirements require that the denial notice state with specificity the reason for the denial; such was done in this matter. 42 CFR 435.917.

In addition, Petitioner argued that all requested verifications were submitted as requested. However, the Department argued at the administrative hearing that Petitioner cannot request that verifications submitted after the denial would be taken into consideration for a prior denial. The Department is correct. However, the Department did not present evidence as to what verifications were submitted at the time of the denial, and/or which ones were lacking. Nor did the Department specify which were turned in timely, which were not, and/or which were turned in after the denial. Again, Petitioner argued all requested verifications were submitted.

As the record is inadequate to make a ruling, and as it would be inadequate for appeal, the undersigned orders the Department to reissue its notice with specificity regarding the reason for denial. If Petitioner disagrees with the denial, Petitioner shall then have an opportunity for another hearing which will allow Petitioner to present proofs of having timely deliver any verification(s) the Department alleges were not timely turned in, or to provide proofs of any assets which were not spend down as of the relevant dates to do so pursuant to the application date or month. As noted, any asset verifications delivered or spent down after the relevant period with regard to the January 22, 2019, application date at issue herein, are irrelevant. The jurisdiction at an administrative hearing is to review the evidence used by the Department at the time the Department processed the case. Subsequent verifications submitted are irrelevant.

Thus, within 10 days this decision the Department is to issue a notice which clearly states with specificity why Petitioner was denied as of the March 4, 2019, denial date. Petitioner shall retain a right to an administrative hearing for 90 days based on the date of the new notice of new denial, which shall relate back to the time period at issue herein. The Department is also ordered to ensure that the proper parties of record are notified.

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, finds that the Department has not 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 January 22, 2019, Medicaid application.

Thus, the Department is

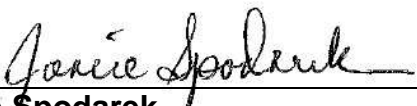
REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reissue its denial notice of March 4, 2019, stating with specificity what verification(s) are missing, if any, and
2. Reissue its denial notice of March 4, 2019, stating with specificity which assets Petitioner is over the MA asset limit, and in what amounts, and
3. Petitioner shall retain a right to an administrative hearing for 90 days from the date of the new notice to provide any proofs to refute the determination by the Department.

IT IS SO ORDERED.

JS/dh



Janice Spodarek
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
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