



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: July 18, 2019
MOAHR Docket No.: 19-005925
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 July 11, 2019, from Detroit, Michigan. Petitioner was represented by [REDACTED], her authorized hearing representative (AHR). The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator and Eligibility Specialist, and [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly deny Petitioner's application for Medicaid (MA) for March 2019 due to 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. Petitioner is in a long-term care (LTC) facility.
2. Petitioner's MA case closed effective February 28, 2019 due to excess assets.
3. On April 10, 2019, Petitioner reapplied for MA requesting retroactive coverage to March 1, 2019 (Exhibit A, pp. 1-10).
4. Petitioner has a bank account into which her monthly Retirement, Survivors and Disability Insurance (RSDI) benefits of \$970 are deposited.

5. Petitioner has a monthly medical insurance expense of \$290 that went unpaid for an extended period, with the outstanding balance accruing to over \$8,000 as of March 2019.
6. A check for the medical insurance expense was written and mailed on March 28, 2019 and cashed in from Petitioner's bank account on April 2, 2019 (Exhibit A, p. 11; Exhibit 1).
7. The lowest balance in Petitioner's bank account was \$6,487.08 in March 2019 and \$820.18 in April 2019 (Exhibit A, p. 11).
8. The lowest balance in Petitioner's LTC trust account for March 2019 was \$0.86 (Exhibit A, p. 12).
9. On May 8, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice notifying her that her application was denied for March 2019 due to excess assets and approved for April 2019 ongoing with a monthly \$537 patient pay amount (Exhibit A, pp. 13-17).
10. On May 29, 2019, the AHR, Petitioner's legal guardian, requested a hearing to dispute the denial of Petitioner's MA application (Exhibit A, pp. 18-19).

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.

The Department notified Petitioner in a May 8, 2019 Health Care Coverage Determination Notice that she was ineligible for MA coverage for March 2019 due to excess assets but approved her April 10, 2019 application for MA coverage for April 1, 2019 ongoing subject to a \$537 monthly patient pay amount. The AHR disputes the Department's denial of Petitioner's request for retroactive coverage for March 2019.

Petitioner, who is over age 65 and resides in an LTC facility, may be eligible for MA under an SSI-related category if she can establish asset eligibility. BEM 400 (April 2019), p. 1; BEM 105 (April 2017), p. 1. For SSI-related MA, the asset limit is \$2000 for an individual in long-term care. BEM 400, p. 8; BEM 211 (February 2019), p. 8. Asset eligibility for MA exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400, p. 7.

At the hearing, the Department testified that it concluded that, based on the funds in Petitioner's bank account and her LTC patient trust account, the value of Petitioner's assets in March 2019 exceeded the applicable MA limit. Money in checking and savings accounts, as well as an LTC patient trust fund, are assets. BEM 400, pp. 1, 15-16. The value of a checking, savings, or money market account is the lowest balance in the month asset eligibility is being determined. BEM 400, p. 17. The value of the LTC patient trust account is the money held by the nursing facility for the resident. BEM 400, p. 18.

In concluding that Petitioner had excess cash assets for March 2019, the Department relied on the fact that the lowest value of the funds in Petitioner's bank account in March 2019, \$6,487.08, less the \$970 RSDI benefits deposited in this account in March 2019, exceeded \$2,000. See BEM 400, p. 23 (requiring that current income be excluded from the calculation of asset value for the same month for the same program).

The AHR did not dispute that Petitioner had an outstanding balance of \$6,487.08 in her bank account in March 2019. But she pointed out that Petitioner had accrued a medical expense of over \$8,000 due to Petitioner incurring monthly health insurance premiums of \$290 that were not being paid and that a check for payment of these expenses from Petitioner's account, though not cashed until April 2, 2019, was written out and mailed on March 28, 2019.

In order for an asset to be countable, it must be available and not an excluded asset. BEM 400, p. 2. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p. 10. Department policy provides that, for ongoing MA recipient, excess assets may be disposed of, without divestment, through payment of medical expenses, living costs, and other debts, and the pending negative action may be deleted if it is verified that the excess assets were disposed of. BEM 400, p. 6.

In this case, the AHR used \$6,000 from Petitioner's bank account to pay Petitioner's insurance company for the outstanding health insurance premiums, a legitimate expense. However, because the insurance company did not cash the check until April 2, 2019, the funds in the bank account continued to be available to Petitioner until then. Because these funds exceeded \$2,000, the Department properly concluded that Petitioner had excess assets for MA eligibility in March 2019.

At the hearing, the Department explained that Petitioner's LTC expenses for March 2019 did not qualify as Pre-Eligibility Medical Expenses (PEMEs). PEMEs are unpaid medical expenses incurred in the three months prior to application for MA and are used to offset a patient pay amount. BEM 546 (July 2019), pp. 10-11. However, the offset to the patient pay amount for payment of PEMEs is only available when these old medical bills are reported *before* the first LTC MA redetermination following the initial LTC eligibility. BEM 164 (April 2017), pp. 2-3; BEM 546 (July 2019), pp. 10-11. The expenses at issue in this case were incurred after the first redetermination following the initial LTC MA eligibility. Therefore, they were not eligible PEMEs to offset Petitioner's patient pay amount.

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 denied Petitioner MA eligibility for March 2019 due to excess assets.

DECISION AND ORDER

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

AE/tm



Alice C. Elkin

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

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: MA- [REDACTED]; EQADHShearings
AP Specialist BSC3