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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: September 10, 2019
MOAHR Docket No.: 19-006851
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 August 8, 2019 from Detroit, Michigan. Petitioner was represented by [REDACTED], Authorized Hearing Representative. The Department of Health and Human Services (Department) was represented by Assistant Attorney General Tonya Celeste Jeter. Also appearing on behalf of the Department was Maureen Curran, Eligibility Specialist. During the hearing, a 49-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-49.

ISSUE

Did the Department properly find Petitioner ineligible for Extended Care (EC) Medicaid (MA) for the months of January 2019 and February 2019?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. After Petitioner became a long-term care patient, he submitted to the Department a [REDACTED], 2019 application for MA benefits under the EC category. Exhibit A, pp. 5-10.
2. Along with the application, Petitioner submitted to the Department an Assets Declaration Patient and Spouse form. On that form, Petitioner disclosed that he and his wife had a trust. Exhibit A, pp. 5-10.

3. The trust was established by Petitioner and his wife. Upon being established, Petitioner and his wife transferred ownership of their home to the trust. Exhibit A, pp. 13-18.
4. On March 4, 2019, the trust transferred ownership back to Petitioner and his wife. Exhibit A, pp. 15-16.
5. On June 7, 2019 and June 11, 2019, the Department issued to Petitioner multiple Health Care Coverage Determination Notices. The notices informed Petitioner that he was denied coverage for January 2019 and February 2019, as Petitioner's countable assets exceeded the limit for program eligibility. However, effective March 1, 2019, Petitioner was found to be eligible. Exhibit A, pp. 19-35.
6. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's determinations.

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 was found to be ineligible for MA under the EC category for January 2019 and February 2019 due to having excessive countable assets. Petitioner objected to that finding. The entirety of this issue comes down to whether the home held in the trust is a countable asset for the purposes of determining Petitioner's eligibility.

To be eligible for MA under the EC category, the value of an individual's countable assets must be less than or equal to the asset limit at least one day during the month tested, which is \$2,000 for the programs relevant to this matter. BEM 400, pp. 7-8. An asset is countable if it meets the availability tests and is not excluded. BEM 400, p. 2. In general, an asset is considered available to an individual if that individual has the legal right to use or dispose of the asset. BEM 400, p. 10.

The Department excludes from countable assets the value of a client's homestead if the client owns the homestead in his or her own name. BEM 400, p. 34. However, if the

home is held in a Medicaid Trust, the homestead is countable. BEM 401 (October 2018), pp. 11-12. A Medicaid Trust is a trust that meets the following five conditions: (1) the person whose resources were transferred to the trust is someone whose assets or income must be counted to determine MA eligibility; (2) the trust was established by the person or the person's spouse; (3) the trust was established on or after August 11, 1993; (4) the trust was not established by will; and (5) the trust is not a Special Needs Trust or Pooled Trust, as defined by policy. BEM 401, p. 7.

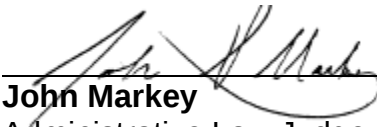
In this case, the trust was established in 2006 by Petitioner and his wife and includes assets transferred by Petitioner. Thus, conditions one through four are all met. Condition five is met as the trust was not a Special Needs Trust or a Pool Trust as defined by policy. Accordingly, the Department was required to treat the assets held in the trust as countable assets, even though if the house was owned in Petitioner's name it would have been exempt. The Department properly counted the home as a countable asset while it was still held by the trust in January 2019 and February 2019. Because the countable value of the home was sufficient to exceed the \$2,000 asset eligibility limit, the Department properly found Petitioner ineligible for those two months.

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 found Petitioner ineligible for EC MA for the months of January 2019 and February 2019.

DECISION AND ORDER

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

JM/tlf


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-Monroe-Hearings
BSC4 Hearing Decisions
AG-HEFS-MAHS - Jeter
EQAD
D. Smith
MOAHR

Authorized Hearing Rep.

- Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

- Via First-Class Mail:

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