



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: January 10, 2020
MOAHR Docket No.: 19-012893
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

AMENDED 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 January 6, 2020 from [REDACTED] Michigan. The Petitioner appeared for the hearing and was self-represented. The Department of Health and Human Services (Department) was represented by Shannon Louisignou, Assistance Payments Supervisor.

ISSUE

Did the Department properly deny Petitioner's Medical Assistance (MA) Program Application?

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] 2019, the Department received Petitioner's Application for MA benefits listing six household members including himself, his wife, four children, and his RSDI income of \$[REDACTED] per month
2. On or about the same day, the Department received Petitioner's verification of assets which showed the transactions in Petitioner's only bank account between October 11, 2019 and October 16, 2019 with the lowest balance being \$[REDACTED].
3. On October 31, 2019, the Department verified Petitioner's receipt of RSDI and Medicare benefits through a State Online Query (SOLQ), an interface with the

Social Security Administration accessible by the Department to aid it in determining a client's Social Security Benefit and Medicare participation.

4. On November 1, 2019, the Department processed Petitioner's Application for MA benefits and issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner informing him that he was not eligible for MA benefits due to excess assets.
5. On November 7, 2019, the Department received Petitioner's request for hearing disputing the Department's denial of his MA Application based upon excess assets.

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 disputes the Department's denial of his MA benefits based upon excess assets. MA is available (i) to individuals who are aged (65 or older), blind or disabled under Supplemental Security Income (SSI)-related categories, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage. BEM 105 (April 2017), p. 1. HMP provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the Modified Adjusted Gross Income (MAGI) methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. BEM 137 (January 2019), p. 1; MPM, Healthy Michigan Plan, § 1.1.

Since Petitioner is not under 21 or over 64, nor is he pregnant, Petitioner does not qualify for any of programs listed above involving these eligibility factors. In addition, since Petitioner is a Medicare recipient, he is not eligible for HMP benefits. Therefore, if Petitioner is eligible for any MA categories, he may be eligible for SSI-related MA benefits based upon his disability and receipt of Medicare.

Policy provides that assets must be considered in determining SSI-related MA case eligibility. BEM 400 (July 2019), p. 1. MA asset eligibility exists when the 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. Both the MSP and Ad-Care Program are sub-categories of MA benefits for which Petitioner might be eligible provided he meets asset and income eligibility requirements. For MSP, the asset limit for a group size of two is \$11,600 effective April 1, 2019. BEM 400, p. 8. For all other SSI-related MA programs, including Ad-Care, the asset limit is \$3,000.00 for a group size of two. *Id.* In SSI-related MA cases for adults, the group includes the applicant and their spouse. BEM 211 (July 2019), p. 8.

In order to verify a checking or draft account, the Department may use a telephone contact or written statement from the financial institution or a monthly statement. BEM 400, p. 63. In this case, the Department accepted and utilized a Transaction Activity printout for the period October 11, 2019 through October 16, 2019. This Transaction Activity printout is insufficient for verification purposes because it only provides a glimpse at one week of the month and does not show any deposits despite Petitioner's statements that he is an RSDI recipient. To be an accurate depiction and make an accurate assessment, the Department must be able to review a full month's worth of activity in an account to determine if Petitioner met the asset test on any day in the month, not just one week during the month. BEM 400, p. 7. Furthermore, income deposited in one month cannot also be considered as an asset in the same month. BEM 400, p. 17; BEM 500, p. 7. Therefore, if Petitioner had any deposits from his RSDI benefit in the month being evaluated, this income would need to be excluded from consideration. Likewise, Petitioner testified that his wife received a Veteran's Pension which would also be excluded as an asset in the month under review. The combined value of these two sources of income is approximately \$[REDACTED] according to Petitioner. Given that Petitioner had total assets in his bank account of \$[REDACTED] and that he estimated his wife's income, it is possible that Petitioner may be eligible for MSP benefits. However, Petitioner's assets are significantly greater than the asset limit for purposes of Ad-Care and it is unlikely that he would be eligible if the above rules were applied.

At the hearing, Petitioner also raised the concern that although he has cash assets which may be greater than the asset limit, his overall net assets, or net worth, is actually negative and believes that this should be factored into his eligibility. In SSI-related MA cases, assets considered in determining eligibility include cash, personal property (any item subject to ownership that is not real property), and real property including land and items affixed to the land. BEM 400, pp. 1-2. Depending on the program under evaluation, some assets are countable, and some are not. BEM 400, p. 2. In SSI-related MA cases, all types of assets are considered. BEM 400, p. 3. A client can maintain eligibility or obtain eligibility for MA benefits by spending an asset for the payment of medical expenses, living costs, or other debts. BEM 400, p. 7; BEM 405 (July 2019). In situations where an asset has no current market value, the asset is countable as having a \$0.00 value. BEM 400, p. 14. This includes situations where there are two verifiable sources showing an item is not salable due to a specific

condition such as contamination and situations where there is a sale attempt for real property at or below fair market value where no reasonable offer is received. *Id.* If a homeowner receives a reverse mortgage, those funds are considered loan proceeds and are excluded in the month received but countable in any future months. BEM 400, p. 21. In addition, in SSI-related MA cases, one homestead (where a person lives that they own, are buying, or hold through a life estate including adjoining lands) is excluded per asset group. BEM 400, p. 35. After a thorough review of policy, there is no provision to account for a negative net worth. Assets are assets and liabilities are liabilities. The Department considers some liabilities (debts and other obligations) when determining income eligibility depending on the program under review. However, no consideration of this nature is given when reviewing asset eligibility. Therefore, even if Petitioner is underwater on a mortgage or other loan or has a significant outstanding debt which he believes would offset his cash assets, these obligations are not relevant to asset eligibility. Furthermore, if a review in accordance with policy of Petitioner's cash assets shows that Petitioner has assets greater than the asset limit, there is no need for further review of Petitioner's other assets.

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 did not act in accordance with Department policy when it denied Petitioner's MA Application due to excess assets.

DECISION AND ORDER

Accordingly, the Department's decision 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. Reinstate and reprocess Petitioner's [REDACTED] 2019 Application for MA benefits;
2. If eligible, issue supplements to Petitioner or on his behalf for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AM/cg



Amanda M. T. Marler
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-Benzie-Hearings
D. Smith
EQAD
BSC2- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

