



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR



Date Mailed: December 12, 2018
MAHS Docket No.: 18-010329
Agency No.: [REDACTED]
Petitioner: David Hixon

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. A hearing scheduled for November 5, 2018, was adjourned. After due notice, an in-person hearing was held on December 5, 2018, from Battle Creek, Michigan. Petitioner represented himself. The Department was represented by Pamela Herman.

ISSUE

Did the Department of Health and Human Services (Department) properly close Petitioner's Medical Assistance (MA), Medicare Savings Program (MSP), and Food Assistance Program (FAP) benefits?

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 August 16, 2018, the Department received Petitioner's Redetermination (DHS-1010) form. Exhibit A, pp 9-16.
2. On September 25, 2018, the Department notified Petitioner that he was not eligible for Medical Assistance (MA) effective November 1, 2018. Exhibit A, pp 17-20.
3. On September 25, 2018, the Department notified Petitioner that he was not eligible for Food Assistance Program (FAP) benefits effective November 1, 2018. Exhibit A, pp 21-22.

4. On October 1, 2018, the Department received a copy of Petitioner's bank statement showing a \$10,754.69 balance in his checking account. Exhibit A, pp 23-25.
5. On October 2, 2018, the Department notified Petitioner that he was no longer eligible for Medical Assistance (MA) and the Medicare Savings Program (MSP) effective November 1, 2018. Exhibit A, pp 25-28.
6. On October 2, 2018, the Department notified Petitioner that he was not eligible for the Food Assistance Program (FAP) effective November 1, 2018. Exhibit A, pp 29-30.
7. On October 1, 2018, the Department received Petitioner's request for a hearing protesting the closure of his benefits.

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.

There are three categories of Medicare Savings Program (MSP) benefits including the Qualified Medicare Beneficiary (QMB), the Special Low Income Medicare Beneficiary (SLMB), and the Additional Low Income Medicare Beneficiary (ALMB). QMB pays Medicare premiums, and Medicare coinsurances, and Medicare deductibles. QMB coverage begins the calendar month after the processing month. SLMB pays Medicare Part B premiums. SLMB coverage is available for retro MA months and later months. ALMB pays Medicare Part B premiums provided funding is available. The Department of Community Health notifies the Department of Human Services if funding is available. ALMB coverage is available for retro MA months and later months. Department of Human Services Bridges Eligibility Manual (BEM) 165 (January 1, 2018), pp 2-4.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

Assets means 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. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (January 1, 2018), pp 1-7.

The asset limit to remain eligible for Food Assistance Program (FAP) benefits is \$5,000. BEM 400, p 5.

The asset limit to remain eligible for the Medicare Savings Program (MSP) is \$7,560 for a household of one. BEM 400, p 8.

For Medicare recipients, the asset limit for a household of one to remain eligible for Medicaid is \$2,000. BEM 400, p 8.

The Department will exclude funds a person has borrowed provided it is a bona fide loan. This exclusion applies only if the funds are not commingled with countable assets and are not in time deposits. BEM 400, p 20.

Bona fide loan means all the following are present:

- A loan contract or the lender's written statement clearly indicating the borrower's indebtedness.
- An acknowledgment from the borrower of the loan obligation.
- The borrower's expressed intent to repay the loan by pledging real or personal property or anticipated income.

This exclusion does not apply to:

- Interest earned on borrowed money.
- Purchases made with borrowed money.

BEM 400, p 20.

Petitioner was an ongoing MA, MSP, and FAP recipient as a benefit group of one when the Department initiated a routine review of his eligibility for ongoing benefits after receiving his Redetermination (DHS-1010) form on August 16, 2018. Based on the information Petitioner reported to the Department on his Redetermination form, the Department requested verification of the cash assets in his bank accounts. Due to a problem accessing the documents Petitioner provided the Department, the Department sent him notices that his benefits would close. Because Petitioner provided the Department with sufficient information to determine his eligibility for benefits before his benefits actually closed, the Department properly reinstated his benefits as directed by BAM 205.

Petitioner testified that in order to pay off the high balance on his high interest credit card, Petitioner took out a personal loan from his bank. Petitioner testified that after paying off his credit card, he retained a portion of the loan proceeds in his checking account as an emergency fund for unexpected expenses that may occur. Petitioner does not deny that the funds in his checking account are available to him.

Petitioner's checking account is a countable asset because it contains money that is available to him. The bank statement provided by Petitioner clearly verifies that the funds in his checking account are mostly from the loan, but also shows that his social security benefits are deposited into that same account. Petitioner also appears to pay his living expenses from that account from his social security benefits and not the loan.

Department policy allows for funds a person has borrowed to be excluded from countable assets, but the policy requires that the loan proceeds be held in a separate account and not commingled with other cash assets. In this case, Petitioner has commingled the loan money with his social security benefits and the Department was unable to exclude the loan money from his other assets. Since the balance of Petitioner's checking account is a countable asset exceeding each of the limits for all the benefits he received, the Department was required to close those benefits.

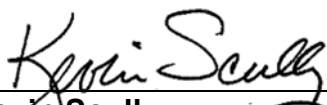
Petitioner cannot regain his eligibility for benefits until the countable balance of his checking account has been reduced. This DOES NOT require that Petitioner spend that money, but only that the countable assets be reduced. Neither the Department nor this Administrative Law Judge are authorized to advise Petitioner the best method of reducing the balance of that account.

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 closed Petitioner's Medical Assistance (MA), Medicare Savings Program (MSP), and Food Assistance Program (FAP) benefits based on his countable assets.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/hb



Kevin Scully
Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Carisa Drake
190 East Michigan
Battle Creek, MI 49016

Calhoun County (District 21), DHHS

BSC3 via electronic mail

D. Smith via electronic mail

EQADHShearings via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

