



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: January 15, 2019
MAHS Docket No.: 18-012268
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 three-way hearing was held on January 2, 2019, from Detroit, Michigan. The Petitioner was represented by [REDACTED], Authorized Hearing Representative; and Petitioner also appeared. The Department of Health and Human Services (Department) was represented by Brenda Drewnicki.

ISSUE

Did the Department properly deny Petitioner Medical Assistance (MA) for Long-Term Care (LTC) and application for retroactive MA coverage 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. The Petitioner was a recipient of Medicaid and resided in Long-Term Care.
2. The Petitioner had a redetermination for March 2018.
3. A Verification Checklist (VCL) was sent to Petitioner on April 18, 2018, requesting verification of a life insurance policy.
4. On May 31, 2018, the Department closed the MA case for failure to verify information.
5. The Petitioner applied for MA for LTC on [REDACTED], 2018.

6. The Department issued a Health Care Coverage Determination Notice (HCCDN) on September 24, 2018, approving the Petitioner's Application effective for August 1, 2018, and denying MA LTC for the retroactive months of June 1, 2018, through July 31, 2018, due to countable assets exceeding the asset limit. (Exhibit E.)
7. On August 28, 2018, the Petitioner provided the Department a Statement of Surrender of a life insurance policy with a cash value of \$ [REDACTED] noting that the taxable income was \$ [REDACTED] (Exhibit D.)
8. The Petitioner redeemed/surrendered her life insurance policy on August 22, 2018, and placed the proceeds in her checking account on August 23, 2018.
9. The Petitioner's AHR, Tess Monea requested a timely hearing on October 29, 2018, protesting the Department's actions.

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, the Department denied the Petitioner's retroactive MA LTC application due to excess assets arising from a life insurance policy with a cash surrender value of \$ [REDACTED] which she surrendered on August 22, 2018, and deposited in her checking account on August 23, 2018. Asset eligibility 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 (May 2018), p. 7. The asset limit for Supplemental Security Income (SSI)-related MA categories is \$2,000 for an asset group of one. BEM 400, p. 8. The Petitioner was an asset group of one.

A **life insurance policy** is a contract between the policy owner and the company that provides the insurance. The company agrees to pay money to a designated beneficiary upon the death of the insured. **Cash surrender value (CSV)** - the amount of money the policy owner can get by canceling the policy before it matures or before the insured dies. It may be titled the cash surrender value or the cash value. The Petitioner was both the insured and the owner of the insurance policy in question. (Exhibit D.)

A life insurance policy is an asset if it can generate a CSV. A policy is the policy owner's asset. Cash surrender value and Face Value are **not** the same thing. BEM 400, p. 44. The Face Value is defined in Department policy as:

Face value (FV) - the amount of the basic death benefit contracted for at the time the policy is purchased. It might be titled the face value, face amount, amount of insurance, amount of policy or sum insured. It does **not** include dividends or additional amounts payable because of accidental death or other special circumstances. BEM 400, p. 44

BEM 400 also requires that the Department look at each policy owner's life insurance separately and exclude the entire cash surrender value when the total **face values** of all policies a policy owner has for the **same insured** are \$1,500 or less. BEM 400 p. 45. (see examples in BEM 400, p. 45).

In this case, the Department did not disclose the face value of Petitioner's life insurance and did not present any evidence that it requested that the face value of Petitioner's life insurance policy be provided or determined, nor did it present at the hearing whether it determined the face value.

BEM 400 requires that the Department look at each policy owner's life insurance separately and is to exclude the entire cash surrender value when the total face values of all policies a policy owner has for the same insured are \$1,500 or less. BEM 400, p. 45.

Based upon policy in BEM 400 referenced above, the Department did not meet its burden of proof to demonstrate that it correctly applied BEM 400 with respect to Petitioner's life insurance policy where she was both the owner and the beneficiary and owner of the policy as it did not present evidence that it determined the policy face value.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied the Petitioner's application for Medicaid LTC for the months of June 2018 and July 2018.

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. The Department shall re-register the Petitioner's application for Medicaid LTC for the months of June 2018 and July 2018 and determine eligibility.
2. The Department shall provide the Petitioner's AHR written notice of all requests for information and its determination.

LMF/



Lynn M. Ferris

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

Tolisha Bates
MDHHS-Macomb-12-Hearings

Petitioner

[REDACTED]
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