



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]  
[REDACTED]

Date Mailed: August 23, 2019  
MOAHR Docket No.: 19-007317  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

### **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 22, 2019, from Detroit, Michigan. Petitioner was represented by her Authorized Hearing Representative (AHR), [REDACTED]. Also present on behalf of Petitioner was her guardian, and son, [REDACTED]. The Department of Health and Human Services (Department) was represented by Rene Colvin, Assistance Payments Supervisor and Nikai Williams, Assistance Payments Worker.

### **ISSUE**

Did the Department properly deny Petitioner's application for Medical Assistance (MA) 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 [REDACTED] 2019, an application for retroactive MA benefits was submitted on behalf of Petitioner (Exhibit A, pp. 7-15).
2. On March 14, 2019, verification of Petitioner's joint checking account with her husband was submitted to the Department (Exhibit A, pp. 16-25).
3. On March 25, 2019, verification of Petitioner's life insurance policy was submitted to the Department (Exhibit A, pp. 26-28).

4. On March 29, 2019, the Department sent Petitioner's AHR a Health Care Coverage Determination Notice (HCCDN) informing her that Petitioner's application for MA benefits was denied (Exhibit A, pp. 29-33).
5. On [REDACTED] 2019, Petitioner's AHR and Petitioner's guardian, her son, submitted a request for hearing disputing the Department's actions.
6. On May 28, 2019, the Michigan Office of Administrative Hearings and Rules (MOAHR) sent Petitioner's second guardian (her husband, [REDACTED]) a letter stating that verification of authority of AHR was needed. The letter was returned as undeliverable (Exhibit A, pp. 34-35).
7. On [REDACTED] 2019, Petitioner's AHR submitted a second request for hearing.

### **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).

As a preliminary matter, the Department argued that MOAHR lacked jurisdiction to address the matter, as the hearing request submitted on [REDACTED] 2019, was not filed within the 90-day time limit.

A client's request for hearing must be in writing and signed by an adult member of the eligible group, adult child, or authorized hearing representative (AHR). BAM 600 (April 2017), p. 2. Moreover, Department policy provides that a request for hearing must be received in the Department local office within 90 days of the date of the written notice of case action. BAM 600, p. 6.

The Department was correct that the [REDACTED], 2019 hearing request was not timely submitted. However, Petitioner's AHR testified that a hearing request was submitted on [REDACTED] 2019. Petitioner's AHR stated that she contacted MOAHR after a significant period of time had lapsed without receiving notification of a scheduled hearing. Petitioner's AHR testified that she was advised that the hearing was "dismissed," as MOAHR had not received verification that she had proper authority to request a hearing on Petitioner's behalf. As a result, Petitioner's AHR submitted a new request for hearing on [REDACTED] 2019.

All clients have the right to request a hearing. BAM 600 (April 2017). A hearing request may be made by an adult member of the eligible group or the client's authorized hearing representative (AHR). BAM 600, p. 1. The appointment of an AHR must be made in writing. BAM 600, p. 2. An AHR must be authorized or have made application through probate court before signing a hearing request for the client. BAM 600 p. 2. A hearing

request with a client signature may name an AHR who is authorized to stand in for or represent the client in the rest of the hearing process. BAM 600, p. 1.

On May 28, 2019, MOAHR sent Petitioner's guardian, and husband, a letter stating written authorization of the appointment of an AHR was needed before the hearing could be scheduled. The letter requesting verification that was sent on May 28, 2019, was returned as undeliverable, as it was sent to the incorrect address. Petitioner's guardian/son and AHR stated they were not aware of the letter. The hearing request was never dismissed, it was merely not scheduled. MOAHR did not receive proper verification of the appointment of Petitioner's AHR until a hearing was scheduled related to the [REDACTED], 2019 hearing request.

Upon review of the documents submitted, Petitioner signed a written authorization appointing [REDACTED] as her AHR on February 19, 2019. The document was submitted to the Department with the [REDACTED] 2019 MA application. As [REDACTED] had proper authority to request a hearing on behalf of Petitioner as of the date of the [REDACTED] 2019 hearing request, and the hearing request was never dismissed, the undersigned ALJ has jurisdiction to address the matter.

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's AHR submitted a retroactive MA application on behalf of Petitioner on [REDACTED], 2019, requesting coverage effective November 1, 2018. Petitioner was in a long term care and/or hospital (L/H) facility. The Department testified that on May 3, 2017, Petitioner's guardian, and husband, was sent an Asset Transfer Notice stating that Petitioner's assets must be at or below the MA asset limit of \$2,000 at the end of one year (Exhibit A, pp. 27-28). As a result, Petitioner was outside the presumed asset eligible period. The Department testified that Petitioner's application for MA benefits was denied, as she exceeded the asset limit.

EC is an SSI-related Group 1 MA category. BEM 164 (April 2017), p. 1. EC is available to L/H and waiver clients who are aged (65 or older), blind or disabled. BEM 164, p. 1. Under the EC program, countable assets cannot exceed the asset limit under BEM 400. BEM 164, p. 2. The Department considers cash, investments, retirement plans, and trusts. BEM 400 (January 2018), p. 1. Cash assets includes funds in a checking account. BEM 400, p. 15. For cash assets, the Department does not count funds treated as income by a program as an asset for the same month for the same program. BEM 400, p. 22. For SSI-related MA programs, the Department also considers life insurance policies as an asset if it can generate a Cash Surrender Value (CSV). BEM 400, p. 44. The CSV is the amount of money the policy owner can get by canceling the policy

before it matures or before the insured dies. BEM 400, p. 44. A policy's asset value is its CSV. BEM 400, p. 44. An asset group includes the individual and the individual's spouse. BEM 211 (January 2016), p. 8. For SSI-related MA categories, the asset limit for a group of one is \$2,000. BEM 400, p. 8.

Additionally, for SSI-related MA, applicants eligible for the processing month, and recipients eligible for the first future month, are automatically asset eligible for up to 12 calendar months regardless of the changes in the community spouse's assets or the number of MA applications/eligibility determinations that occur during the period. BEM 402 (January 2019), p. 4. The 12-month period begins with the month following the processing month and is called the presumed asset eligible period. BEM 402, p. 4. The presumed asset eligible period allows time for the client to transfer assets to the community spouse. BEM 402, p. 5. The client is not required to transfer assets to the spouse. BEM 402, p. 5. However, if they fail to do so, the client may not be ineligible for MA after the presumed asset eligible period. BEM 402, p. 5. When the asset eligible period ends, the Department will use BEM 400 to determine continuing asset eligibility. BEM 400, p. 5. The community spouse is not a group member. BEM 440, p. 5. The protected spousal amount is not used. BEM 402, p. 5. Therefore, the clients own countable assets must not exceed the asset limit (currently \$2,000 for Ad-Care and EC). BEM 402, p. 5.

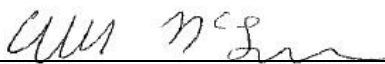
Petitioner's guardian testified that he was not aware of his father's receipt of the Asset Transfer Notice. Petitioner's AHR testified that they had no knowledge that the Department had begun Petitioner's asset eligible period until the [REDACTED] 2019 application was denied. Petitioner's AHR stated that once they learned of the requirement, Petitioner's assets were transferred to her husband.

The Department properly notified Petitioner's husband, and guardian, of the initiation of the presumed asset eligible period. At the time of [REDACTED], 2019 application, Petitioner's presumed asset eligible period had expired. Petitioner's assets well exceeded the asset limit. Therefore, the Department acted in accordance with policy when it denied Petitioner's MA application.

### **DECISION AND ORDER**

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

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**Ellen McLemore**  
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-Wayne-82-Hearings  
D. Smith  
EQAD  
BSC4-Hearing Decisions  
MOAHR

**Authorized Hearing Rep. –  
Via First-Class Mail:**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner –  
Via First-Class Mail:**

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

**Authorized Hearing Rep. –  
Via First-Class Mail:**

[REDACTED]  
[REDACTED]  
[REDACTED]