



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: December 23, 2019  
MOAHR Docket No.: 19-012423  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Landis Lain

**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 December 19, 2019, from Lansing, Michigan. The Petitioner was represented by her son, [REDACTED] [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Franklin Cabello, Eligibility Specialist and Hearings Facilitator.

Petitioner's Exhibits 1-5 and Respondent's Exhibit A pages 1-17 were admitted as evidence.

**ISSUE**

Did the Department properly deny Petitioner's application for Medical Assistance (MA) based on 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. On [REDACTED], 2019, Petitioner applied for Medical Assistance.
2. On November 1, 2019, Petitioner was admitted to [REDACTED] nursing home on private pay.
3. Petitioner was the owner of three life insurance policies at [REDACTED] [REDACTED] in the amounts of (\$ [REDACTED] \$ [REDACTED] and \$ [REDACTED]. The cash value of all three policies was \$ [REDACTED].

4. The Department determined that Petitioner was \$ [REDACTED] over the \$2000 asset limit.
5. On November 5, 2019, the Department sent Petitioner Health Care Determination Notice indicating that her application was denied for excess assets.
6. On [REDACTED] [REDACTED] [REDACTED] Petitioner filed a Request for Hearing to contest the Department's negative action.
7. On November 27, 2019, the Michigan Office of Administrative Hearings and Rules received a Hearing Summary and attached documents.
8. Petitioner has paid nursing home fees for September, October, November and December 2019.

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever they believe the decision is incorrect. The Department provides an administrative hearing to review the decision and determine its appropriateness in accordance to policy. This item includes procedures to meet the minimum requirements for a fair hearing. BAM 600, page 1.

In this case, Petitioner is a [REDACTED] woman. She is a group size of one person for purposes of Medical Assistance benefit eligibility determination. Under BEM, Item 400, an eligible Medical Assistance recipient may not possess in excess of \$2000 in assets.

**Assets** mean 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 (examples: currency, savings accounts and vehicles). BEM, Item 400, page 1. Countable assets **cannot** exceed the applicable asset limit. Not all assets are counted. An asset is countable if it meets the availability tests and is **not** excluded. Available means that someone in the asset group has the right to use or dispose of the asset. BEM, Item 400, page 5. All types of assets are considered for SSI-related MA. BEM, Item 400, page 2. For Medicare Savings Programs (BEM 165) and QDWI (BEM 169) the asset limit is:

- . \$4,000 for an asset group of one.
- . \$6,000 for an asset group of two.

For all other SSI-related MA categories, the asset limit is:

- . \$2,000 for an asset group of one.
- . \$3,000 for an asset group of two. BEM, Item 400, page 5.

Petitioner's allegation that that the cashing of the life insurance policies was delayed is a compelling equitable argument to be excused from the Department's program policy requirements.

However, equity powers are not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Health and Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the Department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

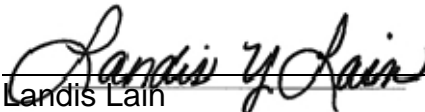
This Administrative Law Judge finds that Petitioner possessed in excess of \$2000 in countable, available assets during the application period. If Petitioner's situation has changed Petitioner should file an application for Medical Assistance and Retroactive Medical Assistance with the Department.

**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 has established by the necessary competent, material and substantial evidence on the record that it acted in accordance with Department policy when it denied Petitioner's application for Medical Assistance (Long Term Care) because Petitioner possessed in excess of \$2000.00 in countable available assets for the date of application.

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

LL/nr

  
\_\_\_\_\_  
Landis Lain  
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

**DHHS**

Christine Anderson  
3040 West Grand Blvd  
Suite 4-250  
Detroit, MI  
48202

Wayne 82 County DHHS- via electronic  
mail

BSC4- via electronic mail

D. Smith- via electronic mail

EQAD- via electronic mail

**Petitioner**

[REDACTED] via first class mail  
[REDACTED]  
[REDACTED], MI  
[REDACTED]

**Authorized Hearing Rep.**

[REDACTED] via first class mail  
[REDACTED]  
[REDACTED], MI  
[REDACTED]