



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

Date Mailed: January 14, 2020
MOAHR Docket No.: 19-012801
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 January 9, 2020, from Detroit, Michigan. Petitioner was represented by his Authorized Hearing Representative (AHR), [REDACTED]. Present on behalf of the AHR was [REDACTED]. The Department of Health and Human Services (Department) was represented by Corlette Brown, Eligibility Specialist and Edith Green, Eligibility Specialist.

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 MA benefits was submitted on behalf of Petitioner.
2. On July 18, 2019, [REDACTED] was appointed as Petitioner's guardian (Exhibit A, p. 15).
3. Petitioner's AHR submitted verification of Petitioner's checking account (Exhibit A, pp. 16-19) and his annuity income (Exhibit A, p. 13).

4. Petitioner had unearned income in the form of Retirement, Survivors and Disability Insurance (RSDI) in the gross monthly amount of \$[REDACTED].
5. Petitioner was a resident of a nursing facility.
6. On October 25, 2019, the Department sent Petitioner's AHR a Health Care Coverage Determination Notice (HCCDN) stating that Petitioner was not eligible for MA benefits effective September 1, 2019, ongoing (Exhibit A, pp. 10-12).
7. On November 22, 2019, Petitioner's AHR submitted a request for hearing disputing 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, an application for MA benefits was submitted on behalf of Petitioner on [REDACTED], 2019. On July 18, 2019, Petitioner's AHR was appointed as his legal guardian. The Department contacted Petitioner's AHR in September 2019 in regard to the [REDACTED], 2019 application. Petitioner's AHR submitted verification of Petitioner's assets and income. On October 25, 2019, the Department issued a HCCDN stating Petitioner was not eligible for MA benefits effective September 1, 2019, ongoing. However, the Department testified that there was no application submitted in September 2019. The Department stated that Petitioner had not been an active MA recipient since March 2019. The Department testified that the October 25, 2019 HCCDN was a denial of the [REDACTED], 2019 application. Per the HCCDN issued on October 25, 2019, Petitioner was determined as ineligible for MA benefits due to excess assets.

EC is an SSI-related Group 1 MA category. BEM 164 (April 2017), p. 1. EC is available only to long term care and/or hospital (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. For SSI-related MA programs, the Department considers cash, investments, retirement plans, and trusts. BEM 400, 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. 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, p. 7. At application, the Department will not authorize MA for future months if the person has excess assets on the processing date. BEM 400, p. 7. 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.

Petitioner was not married. Per policy, Petitioner's fiscal group size for SSI-related MA benefits is one. BEM 211 (January 2016), p. 8. Therefore, Petitioner's assets cannot exceed the limit of \$2,000. The Department testified that Petitioner's checking account was the only asset considered. The Department presented the verification of Petitioner's checking account showing he had a liquid asset total of \$2,651.39. Therefore, the Department determined that Petitioner's assets exceeded the limit for his group size and denied the MA application.

The Department erred when it determined Petitioner's assets exceeded the limit for his group size. Upon review of Petitioner's checking account activity, Petitioner's checking account balance was below \$2,000 on each date, with the exception of August 21, 2019, when his account balance was \$2,651.39. Per policy, Petitioner's countable assets have to be less than, or equal to, the applicable asset limit for at least one day during the month being tested. Petitioner's checking account had a balance of less than \$2,000 in both August and September 2019. Additionally, the Department failed to exclude Petitioner's current income. Both Petitioner's annuity and his RSDI benefits would be considered when determining his eligibility under the EC MA category. Therefore, both income sources should have been deducted from Petitioner's asset total. Petitioner's assets were well below the asset limit for SSI-related MA benefits. Thus, the Department did not properly follow policy when it denied Petitioner's MA application.

It should be noted that the HCCDN only indicated that Petitioner was determined as ineligible for MA benefits due to excess assets. However, the hearing summary states that Petitioner also had excess income.

Income eligibility for EC MA benefits exists when the client's gross income does not exceed 300 percent of the Supplemental Security Income (SSI) benefit rate. BEM 164, p. 2. When determining countable income, the Department will use policies in BEM 500, 501, 502, 503, 504 and 530. BEM 164, p. 2. The Department will not apply the deductions in BEM 540 and BEM 541. BEM 164, p. 2. The Department will multiply the Federal SSI benefit rate of \$771 by 3 to obtain the EC income limit, which is \$2,313. RFT 248 (January 2019), p. 1.

The Department presented verification of Petitioner's annuity income in the gross monthly amount of \$ [REDACTED] (Exhibit A, p. 13). Petitioner also had a gross monthly RSDI benefit amount of \$ [REDACTED]. Both income sources are countable. BEM 503 (October 2019),

p. 4 and p. 28. Petitioner's total gross income was \$ [REDACTED]. Therefore, Petitioner's income did not exceed the limit under the EC MA program.

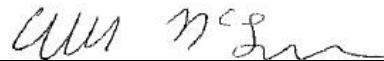
DECISION AND ORDER

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 did not act in accordance with Department policy when it denied Petitioner's MA application. 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 MA application;
2. If Petitioner is eligible for MA benefits, provide him with coverage he is entitled to receive; and
3. Notify Petitioner's AHR of its decision in writing.

EM/cg



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-31-Hearings
D. Smith
EQAD
BSC4- Hearing Decisions
MOAHR

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

[REDACTED]

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

[REDACTED]