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

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

[redacted]
[redacted]
[redacted]
[redacted], MI [redacted]

Date Mailed: July 30, 2021
MOAHR Docket No.: 20-003877
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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, an administrative hearing was held on June 29, 2021.

Petitioner was represented by Attorney Nancy Nawrocki.

The Michigan Department of Health and Human Services (Department) was represented by AAGs Geraldine Brown and Stephanie Service.

Petitioner called the following witnesses:

[redacted]
Attorney Corey Phillips

The Department called the following witnesses:
Maxine Chapman, ES Worker
Dana Bongers, APS

Petitioner Exhibit I.54 was offered and admitted into the record.

Department Exhibits A.152 and B.35 were offered and admitted into the record:

ISSUE

Did the Department properly deny Petitioner's long-term care (LTC) Medicaid application on the grounds of 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 the MDHHS received an Asset Declaration Patient and Spouse application along with a Medicaid.

2. On or about April 12, 2019 Petitioner's spouse paid a $75,000 fee to Heritage Community classified as an entrance fee to [redacted] part of [redacted] Petitioner and his spouse both reside at [redacted]. Petitioner resides [redacted]; Petitioner's spouse resides [redacted]. The $75,000 is classified as a principal that subsidizes Petitioner's spouse's monthly fee by spending down the $75,000 principal used toward her care at 1.5% per month (of the $75,000) amortized over 67 months. At the time of the application, the amount remaining was $71,780.

3. On November 14, 2019, the MDHHS received proof of the June 30, 2019 balance of Petitioner's spouse's continuing care contract with [redacted] as $71,780.

4. On November 4, 2019, the Department completed the Initial Asset Assessment (IAA).

5. On [redacted] 2019, Petitioner passed away.

6. On January 8, 2020, the Department denied Petitioner LTC application due to excess assets as of June 30, 2019 based on [redacted] bank accounts of [redacted]; [redacted] Accts [redacted]; [redacted] with a total of [redacted] exceeding the asset limit.

7. On April 2, 2020, Petitioner's spouse filed an appeal.

8. The maximum 2019 CSRA as [redacted]

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.

As a condition of receiving federal funding for its Medicaid program, the MDHHS is required to comply with all federal Medicaid law. 42 USC 1396c; 42 CFR 430.30. In 42 USC 1396p(g), Congress provided the rules for continuing care contracts, which the Department must follow.

Applicable Department policy regarding assets is found in BEM 400 Asset policy, and BEM 402 Special MA Asset Rules, along with corresponding applicable policy.

In this case, the month tested for Petitioner's Medicaid eligibility is June 2019. The CSRA was calculated as [redacted] based on the assets held by Petitioner and his community spouse on March 24, 2019, the IAA date. Petitioner was also allowed to retain [redacted] as his personal assets, so the maximum countable assets that Petitioner and his community spouse had and could retain and still qualify Petitioner for Medicaid was [redacted].

As of June 30, 2019, the Department counted the following as assets attributed to Petitioner and his spouse: [redacted] Bank Accounts: [redacted] [redacted] Accts [redacted]; [redacted] totaling [redacted]. The maximum amount for 2019 was [redacted]. The [redacted] contract placed assets over the asset limit and thus, the Department found no MA eligibility due to excess assets.

Petitioner's spouse chose the Traditional Agreement Plan with [redacted] Community which amortizes 1.5% monthly fee over 67 months toward her cost of care of the $75,000 entrance fee paid, or $1,125.00 per month that the facility keeps towards her care. Petitioner's spouse also pays an additional $2,995.00 as part of her monthly contract. At the end of the 67 months, the traditional plan has a zero refundable amount.

The specific issue in this case is whether the contract with [redacted] for continuing care is a countable asset for the MA LTC program. And specifically, whether the federal Medicaid and Social Security law and regulations required that the contract that Petitioner's spouse has with [redacted] meets all of the requirements of 42 USC 1396p(g) such that it constitutes a countable asset for Petitioner's Medicaid benefits eligibility. That law, 42 USC 1396p(g) provides in pertinent part:

> …(g) Treatment of Entrance Fees of Individuals Residing in Continuing Care Retirement Communities

(1) In General.
For purposes of determining an individuals' eligibility for, or amount of, benefits under a State plan under this subchapter, the rules specified in paragraph (2) shall apply to individuals residing in continuing care retirement communities, or life care communities that collect an entrance fee on admission from such individuals.

(2) Treatment of Entrance Fee
For purposes of this subsection, an individual's entrance fee in a continuing care retirement community or life care community shall be considered a resource available to the individual to the extent that—

(A) The individual has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care should other resources or income of the individual be insufficient to pay for such care;

(B) The individual is eligible for a refund of any remaining entrance fee when the individual dies or terminates the continuing care retirement community or life care community contract and leaves the community; and

(C) The entrance fee does not confer an ownership interest in the continuing care retirement community or life care community.

At the onset, Petitioner argues in part that the Department cannot apply 42 USC 1396 to Petitioner as his spouse was not the MA applicant and the asset in dispute was an asset that belonged to Petitioner's spouse. Thus, Petitioner argues that the contract that Petitioner's spouse has with the [redacted] Community is not applicable to the asset declaration. The MDHHS argues that under Medicaid law, Petitioner's spouse is the community spouse of the Medicaid applicant, Petitioner. Under 42 USC 1396p(h)(1) a community spouse's entrance fee contract is a countable asset in the calculation of Petitioner's Medicaid eligibility pursuant to 42 USC 1396p(g)(2)(1), (B), and (c) for the IAA.

The undersigned finds that with regard to whether Petitioner's spouse's assets are counted, the MDHHS argument must prevail - federal and state law require that the MDHHS comply with the federal mandates with regard to the calculation of the IAA for initial asset based on the federal and congressional requirements. Under 42 USC 1396p(h)(1), Petitioner's spouse is a community spouse and her assets count for the determination of Petitioner's eligibility. Petitioner offered no law or policy that allow the Department to deviate from these requirements.

While Petitioner's counsel stipulated that there are no factual disputes regarding B and C, it was unclear if the stipulation went beyond the facts to the impact if B and C are met as to MA asset eligibility. Thus, an analysis will be done as to all three, A, B, and C.

42 USC 1396p(g)(2)(A)

Because Petitioner's spouse 'has the ability to use the entrance fee,' her membership fee meets the requirements of 42 USC 1396p(g)(2)(A). Payment of $75,000.00 was made and each month Petitioner's spouse cost $4,120.00. Had Petitioner's spouse not paid the fee, the same apartment would cost $4,630.00. Here, each month she pays $2,995 and her membership fee pays out $1,125.00 for the cost of her care.

42 USC 1396p(g)(2)(B)

Petitioner's spouse's continuing care contract with [redacted] provides that she "is eligible for a refund of any remaining entrance fee when the individual dies or terminates the continuing care retirement community or life care community contract and leaves the community." It is nonrefundable for the portion that has already been used for ongoing care. The [redacted] continuing care contract provides for during the first six months of residency with a 30-day notice, may cancel membership and receive a refund of the membership fee, if the resident vacates the community not more than 30 days after giving notice. At the time of being tested for MA, the contract was less than two months old. Thus, Petitioner's spouse was able to collect her entire membership fee, less any cost of care already deducted with other amounts not at issue here. Thus, the contract meets the requirements of 42 USC 1396p(g)(2)(B), which makes her membership fee, or at least that part that is still refundable, a countable asset.

42 USC 1396p(g)(2)(C)

The last requirement is that the entrance fee does not confer an ownership interest. By the contract terms, there is no proprietary rights to the real estate.

Here, the Department excluded the amount of the entrance fee already paid using the 1.5% times the $75,000 from the contract date. The contract with [redacted] Community, [redacted] allows for a refund of any remaining entrance fee when the individual dies or terminates the continuing care retirement community or life care community contract and leaves the community. The undersigned finds that the assets held in the [redacted] Continuing Care Agreement to be the type of asset that Congress intended to make a countable asset pursuant to 42 USC 1396p(g). Thus, the remaining portion of the Continuing Care Contract is a countable and resource available to Petitioner for Medicaid, and as such, the Department's denial was supported by the credible and substantial evidence of record as the asset is countable under federal and state law.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department acted in accordance with Department policy when it denied Petitioner's MA application due to excess assets.

DECISION AND ORDER

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

JS/ml

Janice Spodarek
Administrative Law Judge

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 electronic mail

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Counsel for Petitioner – via first class mail

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