



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], CA [REDACTED]

Date Mailed: November 13, 2020
MOAHR Docket No.: 20-005791
Agency No.: [REDACTED]
Petitioner: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on October 21, 2020. Petitioner was represented by her authorized hearing representative [REDACTED] [REDACTED]. The Department was represented by Megan Sterk and Deborah Visit.

ISSUE

Did the Department of Health and Human Services (Department) properly deny Petitioner's application for Medical Assistance (MA)?

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] [REDACTED] 2020, the Department received Petitioner's application for Medical Assistance (MA). Exhibit A, pp 9-19.
2. On July 28, 2020, the Department requested that Petitioner provide verification of her countable assets. Exhibit A, pp 20-21.
3. On August 14, 2020, the Department received verification that Petitioner held an insurance policy with a net cash value of \$4,360.61. Exhibit A, p 24.
4. On August 14, 2020, the Department notified Petitioner that she was not eligible for Medical Assistance (MA) as of July 1, 2020, the application month. Exhibit A, pp 28-31.
5. On September 1, 2020, the Department received Petitioner's request for a hearing protesting the denial of Medical Assistance (MA). Exhibit A, pp 4-5.

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 through 42 USC 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 through 42 CFR 420.25. The Department administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.103 through MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

Assets means 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. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (July 1, 2020), pp 1-7.

For an individual over the age of 64 that is not receiving Supplemental Security Income (SSI), the countable asset limit to be eligible for MA benefits is \$2,000. BEM 400, pp 8-9.

On ■■■■■ 2020, the Department received Petitioner's application for MA benefits. On August 14, 2020, the Department received verification that Petitioner held an insurance policy with a net cash value of \$4,360.61. The Department notified Petitioner that her application had been denied and that she was not eligible for MA benefits effective July 1, 2020.

Petitioner's representative argued that the life insurance policy was not "available" to Petitioner since her assets were subject to a conservatorship created in the state of California and that Petitioner's conservator was unable to liquidate the life insurance policy while Petitioner was a Michigan resident.

However, the life insurance policy was "available" to Petitioner has defined by BEM 400 because Petitioner maintained the legal right to use or dispose of that asset. The fact that it was inconvenient and time consuming for a conservator appointed in California to access the assets of a Michigan resident does not make the asset unavailable.

Petitioner's representative did not dispute that if the life insurance policy was available to Respondent when she applied for MA benefits that this countable asset would make her ineligible for MA benefits. Petitioner's representative argued that Petitioner should

be able to receive MA benefits as of the application date if she was able to address the matter shortly after filing her application for assistance.

However, Petitioner's representative was unable to cite any authority allowing Petitioner to become eligible for MA benefits in a month that she held countable assets exceeding \$2,000.


Petitioner's request is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to 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).

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 [REDACTED] [REDACTED] 2020, application for Medical Assistance (MA) based on her countable assets.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/nr



Kevin Scully
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

Mariah Schaefer
3255 122nd Ave Ste 300
Allegan, MI
49010

Allegan County DHHS- via electronic mail

BSC3- via electronic mail

D. Smith- via electronic mail

EQAD- via electronic mail

Authorized Hearing Rep.

██████████ - via first class mail

██████████
██████████, CA
██████████

Petitioner

████████████████████ - via first class mail

████████████████████
██████████, CA
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