



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: May 26, 2021
MOAHR Docket No.: 20-008831
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 March 16, 2021. The Petitioner was represented by [REDACTED] Court Appointed Conservator. [REDACTED] prior Guardian, and [REDACTED] Spouse, appeared as witnesses for Petitioner. The Department of Health and Human Services (Department) was represented by Lorraine Massie, Assistance Payments Supervisor (APS), and Kerry Jutila, Eligibility Specialist (ES).

During the hearing proceeding, the Department's hearing summary packet was admitted as Exhibits A, pp. 1-134.

ISSUE

Did the 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] 2020, an application for MA was filed on Petitioner's behalf. (Exhibit A, pp. 13-16)
2. On April 28, 2020, an Asset Declaration request was received. There was an additional life insurance asset not previously reported. (Exhibit A, pp. 3, and 17-18)
3. On April 28, 2020, numerous verifications were submitted for several assets. (Exhibit A, pp. 22-109)

4. On May 4, 2020, a Verification Checklist was issued requesting verifications for an Initial Asset Assessment (IAA) by a May 14, 2020 due date. The Department requested records for all assets, all income, and several household expenses. It was specifically noted that this would include the values as of the October 23, 2018 IAA date for two [REDACTED] Insurance policies and a stock account. (Exhibit A, pp. 110-112)
5. On May 20, 2020, the due date for the verifications for the IAA was extended to June 1, 2020. (Exhibit A, pp. 113-115)
6. On June 4, 2020, an in-person visit was completed with Petitioner's Guardian. (Exhibit A, p. 3)
7. On June 5, 2020, the verifications that were submitted were processed and it was noted that some verifications were still pending. (Exhibit A, p. 3)
8. On June 9, 2020, a collateral contact was completed to verify the Veteran's Administration (VA) pension. (Exhibit A, p. 3)
9. On June 10, 2020, the IAA was approved and it was noted that bank statements for the month of April were still needed. (Exhibit A, p. 3)
10. On June 10, 2020, bank statements and medical expense verifications were received. (Exhibit A, p. 3)
11. On June 10, 2020, a Health Care Coverage Determination Notice was issued denying MA due to the value of countable assets being higher than allowed for this program. (Exhibit A, pp. 117-124)
12. On August 20, 2020, a hearing request was filed on Petitioner's behalf contesting the Department's determination. (Exhibit A, pp. 4-7)

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.

Petitioner's prior guardian is seeking MA coverage from when Petitioner first entered long term care on [REDACTED] 2019, through his death on [REDACTED] 2020. Petitioner's prior guardian testified that a MA application was filed in [REDACTED] 2020 by the facility. (Exhibit A, pp. 3-4; Prior Guardian Testimony) However, this Administrative Law Judge (ALJ) is limited to reviewing case actions that occurred within the 90 days prior to the date the hearing request was submitted. BAM 600, January 1, 2020, p. 2. The APS testified that the [REDACTED] 2019 MA application was denied on January 14, 2020. (APS Testimony) The hearing request was filed on August 20, 2020. (Exhibit A, pp. 4-7) Therefore, there is no jurisdiction to address Petitioner's MA eligibility retroactive to November 2019 as the hearing request was filed more than 90 days from the January 14, 2020 case action.

The August 20, 2020 hearing request was timely filed to review the June 10, 2020, denial of the [REDACTED] 2020 application for MA, which was due to the value of countable assets being higher than allowed for this program.

An individual in a long-term care (LTC) facility is never considered to be living with others. BEM 211, July 1, 2019, p. 6.

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, April 1, 2018, p. 7. For an SSI-related MA group of one, the asset limit is \$2,000.00. BEM 400. pp. 8-9.

BEM 402 addresses Special MA Asset Rules, including the IAA:

Initial Eligibility Formula

SSI-Related MA

The formula for asset eligibility is:

- The value of the couple's (applicant, spouse, joint) countable assets for the month being tested.
- MINUS the protected spousal amount (in this item).
- EQUALS the client's countable assets. Countable assets must not exceed the limit for one person in BEM 400 for the category(ies) being tested.

BEM 402, January 1, 2020, p. 4.

INITIAL ASSET ASSESSMENT

MA Only

An initial asset assessment is needed to determine how much of a couple's assets are protected for the community spouse.

An initial asset assessment means determining the couple's (applicant's, spouse's, joint) total countable assets as of the first day of the **first** continuous period of care that began on or after September 30, 1989.

BEM 402, January 1, 2020, p. 7.

PROTECTED SPOUSAL AMOUNT

MA Only

The protected spousal amount is the amount of the couple's assets protected for use by the community spouse. It is the greatest of the amounts in 1-3 below.

1. Minimum Resource Standard:

- \$25,728 effective January 1, 2020.
- \$25,284 effective January 1, 2019.
- \$24,720 effective January 1, 2018.
- \$24,180 effective January 1, 2017.
- \$23,844 effective January 1, 2016.
- \$23,844 effective January 1, 2015.
- \$23,448 effective January 1, 2014.
- \$23,184 effective January 1, 2013.
- \$22,728 effective January 1, 2012.
- \$21,912 effective January 1, 2010.
- \$21,912 effective January 1, 2009.
- \$20,880 effective January 1, 2008.
- \$20,376 effective April 1, 2007.

One-half the initial asset assessment amount (see initial asset assessment in this item), but not more than:

- \$128,640 effective January 1, 2020.
- \$126,420 effective January 1, 2019.
- \$123,600 effective January 1, 2018.
- \$120,900 effective January 1, 2017.
- \$119,220 effective January 1, 2016.
- \$119,220 effective January 1, 2015.
- \$117,240 effective January 1, 2014.
- \$115,920 effective January 1, 2013.
- \$113,640 effective January 1, 2012.
- \$109,560 effective January 1, 2010.
- \$109,560 effective January 1, 2009.
- \$104,400 effective January 1, 2008.

- \$101,880 effective April 1, 2007.
2. The amount determined in a hearing per BAM 600.
 3. The amount of assets transferred to the community spouse by the client pursuant to a court order requiring the client to:
 - Pay support to the community spouse, and
 - Transfer assets to the community spouse for the support of the community spouse or a family member. Family member is defined under family allowance in BEM 546.

BEM 402 pp. 9-10

INSTRUCTIONS

MA Only

A completed, signed DHS-4574-B is used to request an initial asset assessment. All such requests, whether or not in conjunction with an MA application, must be registered and completed.

EXHIBIT I - DETERMINING SSI-RELATED MA ASSET ELIGIBILITY PER BEM 402

The determination of asset eligibility is a multi-step process.

1. Do INITIAL ASSET ASSESSMENT.
2. Determine PROTECTED SPOUSAL AMOUNT.
3. Determine applicant's (spouse, joint) countable assets for month being tested.
4. Subtract PROTECTED SPOUSAL AMOUNT from the couple's assets.
5. Compare result from step 4 to client's asset limit to determine if asset eligibility exists for month being tested.

BEM 402 p. 12

Petitioner's prior guardian and Petitioner's conservator raised concerns with the application process and asserted that the Department could have been more helpful earlier on. For example, assistance could have been provided sooner with obtaining verifications and the Department could have advised to have Petitioner's name taken off of accounts or how much money needed to be spent. (Exhibit A, pp. 3-4; Prior Guardian

and Conservator Testimony) However, it is noted that pursuant to BAM 130, the client is to obtain the required verification and the Department is to assist if they need and request help. Further, pursuant to BAM 105, the local Department office is not expected to provide estate planning advice or determine the effect on eligibility or proposed financial arrangements. BAM 105, October 1, 2019, p. 14. Further, as indicated above, this ALJ is limited to reviewing the June 10, 2020, denial of the ██████████ 2020 application for MA, which was based on the value of countable assets being higher than allowed for this program.

In this case, the IAA total assets were \$45,956.95. (Exhibit A, p. 116)

To determine the protested spousal amount in this case, the Department could only consider (1) the applicable minimum resource standard or half the IAA amount. There was no evidence of a hearing decision determining the protected spousal amount or a court order transferring assets from Petitioner to his community spouse. As of January 1, 2020, the applicable minimum resource standard was \$25,728.00, which is greater than half the IAA amount, \$22,978.48. Therefore, the Department properly utilized the applicable minimum resource standard as the protected spousal amount. (Exhibit A, p. 116)

The MA total countable assets were \$37,739.51. (Exhibit A, p. 116) When the protected spousal amount of \$25,728.00 is subtracted, the result is \$12,011.51. Therefore, utilizing the initial eligibility formula from BEM 402, Petitioner's total countable assets were \$12,011.51. (Exhibit A, p. 116) As cited above, the asset limit is \$2,000.00 for an SSI-related MA group of one. BEM 400. pp. 8-9. Therefore, the Department properly determined the Petitioner was not eligible for MA due to value of his countable assets being higher than allowed for this program.

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 application for Medical Assistance (MA).

DECISION AND ORDER

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

CL/ml



Colleen Lack
Administrative Law Judge
for Elizabeth Hertel, 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

Lorraine Massie (Houghton)
Houghton County DHHS – via electronic
mail

BSC1 – via electronic mail

C. George – via electronic mail

EQAD – via electronic mail

Authorized Hearing Rep.

[REDACTED] – via first class mail

[REDACTED]
[REDACTED] MI [REDACTED]

Petitioner

[REDACTED] – via first class mail

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]