



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] MI [REDACTED]

Date Mailed: May 14, 2021
MOAHR Docket No.: 21-000561
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 hearing¹ was held on March 10, 2021. The Petitioner was represented by Andrew Luoma, Attorney. [REDACTED] Daughter and Power of Attorney, appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by H. Daniel Beaton Jr., Assistant Attorney General. Chrissie Johnston, Assistance Payments Supervisor, Michele Mayo, Eligibility Specialist, and Lorraine Massie, Assistance Payments Supervisor, appeared as witnesses for the Department.

During the hearing proceeding, the hearing summary packet for Petitioner’s case was admitted as Exhibit A, pp. 1-69; the hearing summary packet for Petitioner’s spouse’s case was admitted as Exhibit B, pp. 1-38; and the attachments to Petitioner’s hearing request was admitted as Exhibit 1, pp. 1-10.

ISSUE

Did the Department properly deny Petitioner’s [REDACTED] 2020, 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 long term care (LTC) MA was submitted for Petitioner with attachments. (Exhibit A, pp. 24-30 and 35-39)

¹ The telephone hearing was held in conjunction with the hearing for Petitioner’s spouse, [REDACTED] MOAHR Docket No. 21-000562.

2. Petitioner's spouse is also a LTC resident. (Exhibit A, pp. 3 and 24)
3. On December 23, 2020, a Verification Checklist was issued to Petitioner's attorney requesting verification of checking account, pension/retirement, IRA, savings account, and annuity by a January 4, 2021 due date. (Exhibit A, pp. 41-43)
4. On January 4, 2021, Petitioner's attorney requested an extension of the due date, which was granted and the new due date was January 15, 2021. (Exhibit A, pp. 3 and 44-46)
5. Requested verifications were submitted, including full bank statements. (Exhibit A, pp. 47-53)
6. Review of the bank statements showed that a payment was being deducted for a life insurance policy that had not been reported. (Exhibit A, pp. 3 and 48)
7. On January 12, 2021, a Verification Checklist was issued to Petitioner's attorney requesting verification of the life insurance policy. (Exhibit A, pp. 57-58)
8. On January 14, 2021, verification of the life insurance policy was submitted showing a cash surrender value of \$2,669.23. (Exhibit A, pp. 60-62)
9. On January 19, 2021, a Health Care Coverage Determination Notice was issued stating Petitioner's application for MA was denied based on assets in excess of the \$2,000.00 limit for a group size of one. It was noted that the life insurance policy for Petitioner has a cash surrender value that exceeds the applicable asset limit. (Exhibit A, pp. 66-69)
10. On February 1, 2021, a hearing request was filed on Petitioner's behalf contesting the Department's determination. (Exhibit A, pp. 7-11)

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.

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, January 1, 2021, p. 7. For an SSI-related MA group of one, the asset limit is \$2,000.00. BEM 400. pp. 8-9.

For SSI-related MA, the value of a life insurance policy is its cash surrender value. BEM 400, pp. 44-45) There are some exclusions for life insurance, such as to pay for funeral expenses and when total face value of all policies for a policy owner is \$1,500.00 or less. BEM 400, pp. 45-46.

Regarding the current income exclusion, the Department is not to count funds treated as income by a program as an asset for the same month for the same program. BEM 400, p. 23.

Regarding tax refunds, for SSI-related MA, the department is to exclude tax refunds for 12 months from the month of receipt. The refund amount is to be subtracted from the household's total assets to determine if they meet the asset limit. The policy notes that this exclusion continues even if the client has already spent the refund. BEM 400, p. 22.

In this case, the Department determined that Petitioner would be considered an SSI-related MA group of one because he was a LTC resident, and his spouse is also a LTC resident. (Exhibit A, p. 3; ES Testimony) Petitioner's assets include a life insurance policy with a cash surrender value of \$2,669.23. (Exhibit A, p. 60) It was noted that no applicable exclusions for life insurance were reported or verified. Accordingly, the value of the life insurance policy itself exceeded the applicable asset limit. (Exhibit A, p. 4; ES Testimony) On January 19, 2021, a Health Care Coverage Determination Notice was issued stating Petitioner's application for MA was denied based on assets in excess of the \$2,000.00 limit for a group size of one. The life insurance policy for Petitioner has a cash surrender value that exceeds the applicable asset limit. (Exhibit A, pp. 66-69)

Petitioner asserts that the current income exclusion found in BEM 400 should be applied to the total assets of the client. Exhibit 1, p. 1. The ES testified that the current income exclusion from BEM 400 was not considered in Petitioner's case because it would fall under the cash exclusion portion of BEM 400. However, it was not contested that the BEM 400 policy does not specify what assets the current income exclusion goes toward. (ES Testimony)

Petitioner asserts that the exclusion should be applied to the total assets similar to how BEM 400 specifies that a tax refund should be deducted from the total assets. (Exhibit 1, pp. 1) Petitioner relies on a Hearing Decision from MOAHR Docket No. 16-003661 where the Administrative Law Judge found in lieu of specific policy on how to apply the current income exclusion, it should be applied how the tax refund exclusion is to be

used, i.e. the current income is to be deducted from the total assets, not just the bank balances. (Exhibit A, pp. 1 and 3-10)

The Department noted that the Hearing Decision Petitioner relies upon is distinguishable because that case only involved cash assets (bank accounts) and did not involve any life insurance assets. (Exhibit 1, pp. 5-10; ES Testimony) Additionally, the Department noted that the BEM 400 policy provides specific exclusions that are applicable to life insurance. See BEM 400, pp. 45-46.

Ultimately, Petitioner's argument was not found to be persuasive. The BEM 400 policy regarding the current income exclusion aims to prevent funds treated as income by a program as an asset for the same month for the same program. BEM 400, p. 23. In this case, it does not appear that not deducting the current income from the total assets results in funds being counted as both income and an asset in the same month for the same program. Petitioner's life insurance policy was issued [REDACTED] 2007, and the cash surrender value as of [REDACTED] 2021 was [REDACTED]. Petitioner's income for [REDACTED] 2021 does not affect the value of the life insurance asset. Therefore, the current income exclusion should not apply in this case. As the value of the life insurance policy itself exceeds the \$2,000.00 asset limit, Petitioner was not eligible for MA.

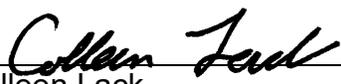
Petitioner also requested review of how the stimulus payments were considered. (Exhibit A, p. 2) However, the ES testified that the stimulus payments were not counted as income or assets. (ES Testimony) Accordingly, the stimulus payments did not affect the eligibility determination for Petitioner's MA application.

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] 2020, application for 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

Chrissie Johnston
Iron County DHHS – via electronic mail

BSC1 – via electronic mail

C. George – via electronic mail

EQAD – via electronic mail

Counsel for Respondent

H. Daniel Beaton, Jr. – via electronic mail

Counsel for Petitioner

Andrew M. Luoma – via first class mail
PO Box 8
706 Crystal Ave
Crystal Falls, MI 49920

Petitioner

██████████ – via first class mail

██████████
██████████ MI ██████████