



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 11, 2023
MOAHR Docket No.: 23-001396
Agency No.: ██████████
Petitioner: ██████████

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 April 11, 2023, from Lansing, Michigan. The Petitioner was represented by ██████████, son. ██████████ Funeral Director, and ██████████ Daughter, appeared as witness for Petitioner. The Department of Health and Human Services (Department) was represented by Sarah Hess, Assistance Payments Supervisor (APS).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-58.

ISSUE

Did the Department properly determine Petitioner's eligibility 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 September 26, 2022, Petitioner purchased life insurance policies for all of her children to pay for their funerals. (Exhibit A, pp. 5 and 47-53)
2. On ██████████ 2022, an application for Long Term Care Medicaid (MA-LTC) was submitted for Petitioner. (Exhibit A, p. 3)

3. The Department determined the case surrender values of the life insurance policies were countable assets, which totaled \$10,637.95. (Exhibit A, pp. 45 and 47-53)
4. On October 14, 2022, a Health Care Coverage Determination Notice was issued denying MA for Petitioner effective September 1, 2022 due to assets in excess of program limits based on the cash value of the life insurance policies related to the burial assets. (Exhibit A, pp. 3, 42-44, and 46; APS Testimony)
5. On or about October 26, 2022, Petitioner canceled the life insurance policies to be re-purchased as trust policies that would meet the BEM 400 policy requirements. (Exhibit A, pp. 5-36)
6. On [REDACTED] 2022, another application for MA-LTC was submitted for Petitioner. (Exhibit A, pp. 33-38)
7. On November 4, 2022, MA was approved for Petitioner from the [REDACTED] 2022 application. (Exhibit A, p. 3)
8. On [REDACTED] 2022, a Retroactive MA application was submitted on Petitioner's behalf requesting MA for the months of July, August, and September 2022. (Exhibit A, pp. 39-41)
9. On November 28, 2022, the Department denied MA for the retroactive months requested based on the value of assets during those months. (Exhibit A, pp. 3 and 54; APS Testimony)
10. On February 27, 2023, Petitioner submitted a hearing request contesting the Department's determination. (Exhibit A, pp. 5-32)

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.

BEM 400 addresses life insurance for funeral expenses:

LIFE INSURANCE EXCLUSIONS

Life Insurance for Funeral

SSI-Related MA Only

In addition to the general exclusion below, some or all of the value of insurance might be excluded to pay for funeral expenses; see **Funeral Plans** in this item.

General SSI-Related MA Life Insurance Exclusion

SSI-Related MA Only

Look at each policy owner's life insurance separately.

Exclude the entire cash surrender value when the total **face values** of all policies a policy owner has for the **same insured** are \$1,500 or less.

See the example and exceptions below.

Example:

Mr. and Mrs. Smith own the following policies:

Policy	Owner	FV	Insured	CSV	
1	Mr.	\$1,000	Mrs.	\$500	
2	Mr.	\$800	Mrs.	\$300	
3	Mr.	\$1,500	Mr.	\$1,000	Exclude
4	Mr.	\$2,000	Son	\$1,000	
5	Mrs.	\$1,500	Mr.	\$500	Exclude
6	Mrs.	\$2,000	Mrs.	\$1,000	

[Cash Surrender Value (CSV)]

CSVs for policies 1 and 2 are **not** excludable under this policy for Mr. Smith. He owns both policies. They insure the same person. The combined FVs exceed \$1,500.

CSV for policy 4 is **not** excludable under this policy for Mr. Smith. The FV exceeds \$1,500.

CSV for policy 6 is **not** excludable under this policy for Mrs. Smith. The FV exceeds \$1,500.

Exceptions: Do **not** count the face value of:

- Term insurance that does **not** generate a CSV.
- Burial insurance. Burial insurance is an insurance policy whose terms prevent the use of its proceeds for anything other than payment of the insured's burial expenses. A policy is not burial insurance if the policy has a CSV the owner can access. A policy used for a Life Insurance Funded Funeral below is not burial insurance. Michigan does not have burial insurance, but a person from another state could have such insurance.
- Endowment policies. An **endowment policy** is a policy which enables the insured to accumulate a sum of money payable to them at a date named in the policy (the maturity date). The policy states whether the money is paid overtime or all at once. The policy matures on the maturity date. An endowment policy is not life insurance. Because the applicant gives up the rights to control the money until the maturity date, a non-matured endowment policy must be considered a divestment; see BEM 405, MA Divestment.

BEM 400, April 1, 2022, pp. 45-47.

BEM 400 also addresses funeral plans:

FUNERAL PLANS

SSI-Related MA Only

Funeral plan refers to the prearrangement for cemetery and/or funeral goods and services. Normally, the plan is established using one or more of the following:

- Burial fund.
- Purchase of burial space.
- Prepaid funeral contract.
- Life insurance funding.

SSI-Related MA Burial Space Exclusion

SSI-Related MA Only

An applicant can own and exclude burial space items for themselves. Burial space items in a prepaid funeral contract must be identified and valued

separately from non-burial space [items] to be excluded Burial space items on a revocable prepaid contract are excluded. Burial space items on an irrevocable contact are not a resource.

In addition to their own burial space items an applicant can own and exclude burial space items for each of the following individuals:

- Each qualified fiscal group member; see BEM 211.
- Whether by blood, adoption or marriage, the member's:
 - Parents.
 - Minor and adult children.
 - Siblings.
- The spouse of each person listed above.

The applicant must retain ownership and control of the burial space item to receive the exclusion; see held for policy in this item. The exclusion ends if the applicant's relationship to a relative only by marriage has ended by death or divorce.

The burial space must continue to meet the held for criteria to be excluded, see held for in this item. If a burial space is transferred to another individual (even if listed above) it no longer meets the held for criteria and must be reviewed for divestment; see BEM 405.

If the burial space items serve the same purpose, exclude only one item per person.

Note: An applicant may transfer a burial space item to a disabled child of any age or the applicant's spouse without incurring a divestment.

Held For. A burial space is held for an individual when the applicant currently has:

- Title to and/or possesses a burial space intended for the listed individual's use (for example has title to a burial plot, has paid for a burial urn).
- A contract with a funeral service company for specified burial spaces for the listed individual's burial (that is, an agreement that represents the listed individual's current right to the use of the items).

A burial space does not meet the definition of held for any applicant or listed individual under an installment sales contract or similar device if the purchase price is not paid in full and any of the following are true:

- The individual does not currently own the space.
- The individual does not currently have the right to use the space.
- The seller is not currently obligated to provide the space.

Until all payments are made on the contract, the amounts paid might be considered burial funds; see Burial Fund Exclusion in this item.

Life Insurance Funded Funeral

SSI-Related MA Only

A funeral plan can be funded using life insurance. A person purchases a life insurance policy and directs the proceeds to be used to pay for their funeral. In addition, the person might irrevocably/permanently transfer ownership of the policy to either:

- A trust.
- A funeral director who then transfers ownership to a trust.

Note: An annuity can be used in the same way to fund a funeral plan.

Proceeds of a life insurance policy means the face value of the policy plus any additions payable at maturity or death. Proceeds are reduced by the amount of outstanding loans against the policy and Accelerated Life Insurance Payments; see BEM 500.

A funeral plan funded with life insurance is not a prepaid funeral contract per BAM 805, *Prepaid Funeral Contracts*.

BEM 400 pp. 48 and 52-55.
(underline added by ALJ)

In this case, the hearing request indicates MA coverage is being sought for September 2022 for Petitioner. (Exhibit A, p. 5).

For the initial [REDACTED] 2022, MA-LTC application for Petitioner, the assets included life insurance policies Petitioner purchased for all of her children to pay for their funerals. (Exhibit A, pp. 3, 5 and 47-53). The case surrender values of the life insurance policies were verified, which totaled \$10,637.95. The Department determined these were countable assets in accordance with the above cited BEM 400 because a life insurance funded funeral is not a prepaid funeral contract and does not meet the “held for” burial space definition. (Exhibit A, pp. 45 and 47-53 and 55-57).

On or about October 26, 2022, Petitioner canceled the life insurance policies to be repurchased as trust policies that would meet the BEM 400 policy requirements. (Exhibit A, pp. 5-36). Petitioner’s son and the Funeral Director acknowledged that the life insurance policies were changed until October 2022. (Son and Funeral Director Testimony). Accordingly, the Department could not approve MA for Petitioner for the retroactive month of September 2022 because Petitioner’s countable assets exceeded the limit that month.

It was asserted that the Department had been allowing exclusion of the originally purchased types of life insurance policies for years, but the Department recently learned these types of policies were not allowable. Therefore, the exclusion could not be applied for Petitioner. (Son and Funeral Director Testimony). The Department was required to start applying the policy correctly as soon as they learned they had not been applying the policy appropriately. No exception could be made for Petitioner based on past practices. Similarly, this Administrative Law Judge must review the Department's determination under the policy as written and has no authority to make any exceptions to the Department policy.

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 determined Petitioner's eligibility for MA.

DECISION AND ORDER

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



CL/ml

Colleen Lack
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:

DHHS
Jennifer Ives
Delta County DHHS
305 Ludington St.
Escanaba, MI 49829
MDHHS-UPSChearings@Michigan.gov

Interested Parties
BSC1
M Schaefer
EQAD
MOAHR

Via First Class Mail:

Authorized Hearing Rep.

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Petitioner

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