



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR



Date Mailed: October 20, 2023
MOAHR Docket No.: 23-004601
Agency No.: 0
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 hearing was held via telephone conference line on September 21, 2023. Petitioner did not participate and was represented. [REDACTED], Petitioner's sister, participated as Petitioner's authorized hearing representative (AHR).¹ The Michigan Department of Health and Human Services (MDHHS) was represented by Susan Derseweh, hearings coordinator.

ISSUE

The issue is whether MDHHS properly denied Petitioner's three applications for Medical Assistance (MA) benefits.

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 January 21, 2023, Petitioner began residency in a nursing home.
2. On March 13, 2023, Petitioner applied for long-term care (LTC) MA benefits.
3. As of March and April 2023, Petitioner had a 401k with a vested balance of \$12,787.39.

¹ Petitioner's mother has power of attorney over Petitioner. Petitioner's mother did not participate in the hearing but authorized her daughter as the AHR.

4. On April 3, 2023, MDHHS denied Petitioner's MA application due to excess assets.
5. On April 27, 2023, Petitioner reapplied for LTC benefits.
6. On May 17, 2023, MDHHS denied Petitioner's MA application due to excess assets.
7. On May 25, 2023, Petitioner's 401k balance was \$0 after \$9,606 in non-withheld proceeds were deposited into a bank account.
8. On June 2, 2023, Petitioner reapplied for LTC benefits.
9. On June 14, 2023, Petitioner passed away.
10. On June 20, 2023, MDHHS received verification that Petitioner's 401k was \$0 as of May 25, 2023.
11. On June 21, 2023, MDHHS denied Petitioner's application for MA due to excess assets.
12. On August 4, 2023, Petitioner's AHR requested a hearing to dispute the denial of Petitioner's three MA applications.

CONCLUSIONS OF LAW

The 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. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MA policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner's AHR requested a hearing to dispute the denial of MA benefits. Exhibit A, pp. 3-4. In all, three different applications were denied.

Petitioner's first MA application was dated March 13, 2023. Exhibit A, pp. 17-20. A Health Care Coverage Determination Notice dated April 3, 2023, stated that Petitioner's application was denied due to excess assets. Exhibit A, pp. 26-28. To support its denial, MDHHS presented documentation of Petitioner's assets. Exhibit A, pp. 21-23 and 29-31. Before it can be considered if Petitioner's application was properly denied, a procedural issue must be addressed.

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 792.10101 to R 792.10137 and R 792.11001 to R 792.11020. Rule 792.11002(1) that an opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance is denied or is not acted upon with reasonable promptness, has received notice of a suspension or reduction in benefits, or exclusion from a service program, or has experienced a failure of the agency to consider the recipient's choice of service. Furthermore, a client's request for hearing must be received in the MDHHS local office within 90 days of the date of the written notice of case action. BAM 600 (March 2021) p. 6.

Petitioner's AHR requested a hearing on August 4, 2023: 144 days after written notice of denial was mailed. Thus, the hearing request was untimely to dispute the denial of the MA application dated March 13, 2023. Accordingly, the hearing request will be dismissed concerning Petitioner's first MA application.

Petitioner's second MA application was dated April 27, 2023. Exhibit A, pp. 33-35. A Health Care Coverage Determination Notice dated May 17, 2023, stated that Petitioner's application was denied due to excess assets. Exhibit A, pp. 41-44.

Medicaid is also known as MA. The MA program comprise several sub-programs or categories. To receive MA under a Supplemental Security Income (SSI)-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Medicaid eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MICHild and Healthy Michigan Plan is based on Modified Adjusted Gross Income (MAGI) methodology. BEM 105 (April 2017), p. 1.

Assets must be considered in determining SSI-Related MA eligibility. BEM 400 (October 2020) p. 1 and 6. SSI-Related Medicaid eligibility considers assets. *Id.*, p. 3. Countable assets include cash. *Id.*, p. 2. There is no asset test for MAGI-related Medicaid categories. *Id.*, p. 3.

MDHHS is to not count funds treated as income by a program as an asset for the same month for the same program. BEM 400 (January 2021) p. 23. Asset eligibility exists when the asset group's countable assets do not exceed the applicable asset limit at least one day during the month being tested. *Id.*, p. 7. For 1-person SSI-related MA groups, the asset limit is \$2,000. *Id.*, p. 9.

From January 21, 2023 through Petitioner's death on June 14, 2023, Petitioner resided in a LTC facility. As a resident of a LTC facility, Petitioner is potentially only eligible to receive MA under an SSI-related category.

For SSI-Related MA, all types of assets, including retirement plans such as a 401k are considered. BEM 400 (January 2023) p. 3. The value of a 401k and/or IRA is the amount of money the person can currently withdraw from the plan. *Id.*, p. 28. In valuing

the asset, MDHHS is to deduct any early withdrawal penalty but not the amount of any taxes due. *Id.* Funds in a retirement plan are not available if the person must quit his job to withdraw any money. *Id.*

Asset documents verified Petitioner had a 401k with \$12,787.39 vested as of March 31, 2023. Exhibit A, pp. 36. There was no evidence suggesting an early withdrawal penalty; thus, the entire vested 401k amount is countable. Petitioner had additional savings and checking accounts with account balances of \$1,211.18 as of January 31, 2023. Exhibit A, pp. 37-38. Adding Petitioner's assets results in a total of \$13,998.57. Thus, Petitioner's assets exceeded \$2,000 and MDHHS properly denied Petitioner's application for MA.

Petitioner's third MA application was dated June 2, 2023. Exhibit A, pp. 45-48. The application was accompanied by a Retroactive MA application seeking MA benefits back to March 2023. Exhibit A, pp. 49-51. A Health Care Coverage Determination Notice dated June 21, 2023, stated that Petitioner's application was again denied due to excess assets. Exhibit A, pp. 62-66.

For Petitioner's third application, MDHHS testified Petitioner submitted the same asset documents that were submitted from Petitioner's second application. Thus, MDHHS contended, Petitioner was properly denied again due to excess assets.

MDHHS received documentation that Petitioner's 401k balance was \$0 as of May 25, 2023. Exhibit A, p. 58. Petitioner's AHR also presented MDHHS with documents indicating that the funds were deposited into an unspecified person's bank account and spent in June 2023.² Exhibit A, pp. 59-61. Petitioner's savings and checking documents listed assets totaling \$1,211.18. Thus, Petitioner's assets were less than \$2,000 as of June 2023.

Given the evidence, MDHHS improperly denied Petitioner's application dated June 2, 2023. As a remedy, MDHHS will be ordered to reprocess the application subject to Petitioner's 401k account being depleted.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner failed to timely request a hearing to dispute an MA application dated March 13, 2020. Concerning Petitioner's dispute over the MA application dated March 13, 2023, Petitioner's hearing request is **DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's application requesting MA benefits dated April 27, 2023 due to excess assets. Concerning the April 27, 2023, MA application, the actions taken by MDHHS are **AFFIRMED**.

² The document verifying the spending of the \$401k funds was not highly legible. Thus, it cannot be concluded with certainty that the funds were spent.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's MA application dated June 2, 2023. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reregister Petitioner's MA application dated June 2, 2023 including retroactive MA benefits; and
- (2) Process Petitioner's application subject to the finding that MDHHS received verification in June 2023 that Petitioner's 401k balance was \$0; and
- (3) Issue supplements and notice in accordance with policy.

The actions taken by MDHHS are **REVERSED**.

CG/tm



Christian Gardocki
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

Susan Derseweh
Genesee County DHHS Clio Rd Dist.
4809 Clio Road
Flint, MI 48504

**MDHHS-Genesee-Clio-
Hearings@michigan.gov**

Interested Parties

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Via-First Class Mail :

Petitioner

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