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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
DIRECTOR



Date Mailed: March 14, 2024
MOAHR Docket No.: 24-000262
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 4, 2024, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by April Newing, Assistance Payments Supervisor.

ISSUE

Did the Department properly determine that Petitioner was ineligible for Medicare Savings Program (MSP) benefits due to excess assets?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was previously a recipient of Medical Assistance (MA) benefits under the Healthy Michigan Plan (HMP).
2. Under the Families First Coronavirus Response Act (FFCRA), PL 116-127, Michigan received additional federal MA funding during the COVID-19 pandemic health emergency (PHE).
3. As a condition for receiving the increased funding, § 6008 of the FFCRA required that the Department provide continuous MA coverage for individuals who were enrolled in MA on or after March 18, 2020, even if those individuals became

ineligible for MA for reasons other than death, residing outside of Michigan, or requesting that MA be discontinued.

4. The MA continuous coverage requirement under § 6008 of the FFCRA was not indefinite.
5. The Consolidated Appropriations Act, 2023 (CAA, 2023), PL 117-328, terminated the continuous coverage requirement effective March 31, 2023.
6. Beginning April 1, 2023, the CAA, 2023 required the Department to reevaluate almost all MA recipients' eligibility for ongoing MA.
7. On or around November 3, 2023, Petitioner submitted a renewal for her MA case. On the renewal, Petitioner reported that as of November 3, 2023, she was responsible for Medicare Part B premiums of \$164. (Exhibit A, pp. 12-15)
8. On or around [REDACTED], 2023, Petitioner also submitted a request for health care coverage, which the Department processed as a request for Medicare Savings Program benefits. (Exhibit A, pp. 16-21)
9. In connection with the renewal and new application, on or around November 7, 2023, the Department sent Petitioner a DHS-1004 Health Care Coverage Supplemental Questionnaire (Questionnaire), which she was instructed to complete and return with all requested verifications by November 17, 2023. (Exhibit A, pp. 22-25)
10. Petitioner timely returned the Questionnaire and included a typed statement documenting all of her assets which included business and personal liquid cash assets in savings, checking, money market, and certificate of deposit accounts, as well as real property, annuity accounts, and 401(k) accounts. (Exhibit A, pp. 26-28)
11. On or around December 26, 2023, the Department sent Petitioner a Health Care Coverage Determination Notice (Notice) advising her that her request for MSP benefits was denied and that effective November 1, 2023, she was determined ineligible for MSP because the value of her countable assets was higher than allowed. (Exhibit A, pp. 45-48)
12. On or around January 2, 2024, Petitioner requested a hearing disputing the Department's denial of her MSP application. (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 1396-1396w-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.

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise would not have the financial resources to purchase them and who meet the financial and nonfinancial eligibility factors. Medicaid, also known as the Medical Assistance (MA) program, is comprised of several sub-programs or categories. BEM 100 (April 2023), pp. 1-2; BEM 105 (January 2024), p.1. The United States Department of Health and Human Services (HHS) develops and issues federal regulations that set the requirements and guidelines for states to follow in the determination of MA eligibility. BEM 100, pp.1-2.

MA is available (i) under SSI-related categories to individuals who are aged (65 or older), entitled to Medicare, blind or disabled, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage, and (iv) to individuals who meet the eligibility criteria for Plan First Medicaid (PF-MA) coverage. 42 CFR 435.911; 42 CFR 435.100 to 435.172; BEM 105, p. 1; BEM 137 (June 2020), p. 1; BEM 124 (July 2023), p. 1. HMP is a MAGI-related MA category that provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income under the MAGI methodology at or below 133% of the federal poverty level (FPL); (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. HMP does not have an asset test. BEM 137, p. 1-5; 42 CFR 435.603.

In this case, the Department representative testified that prior to submitting her MA renewal and the [REDACTED] 2023, application requesting MSP benefits, Petitioner had previously been approved for and receiving MA under the HMP category, which does not have an asset test. However, because Petitioner was enrolled in the Medicare program, she was no longer eligible for HMP and her eligibility for MA under an SSI-related category was determined, as she now also sought assistance from the State with payment of Medicare premiums through the MSP. The Department contended that Petitioner was ineligible for MSP benefits because the value of her countable assets exceeded the limit for the program.

Asset eligibility is required for MA coverage under SSI-related MA categories. BEM 400 (July 2023), p. 1-8; BEM 105, p. 1. MSP are SSI-related MA categories. There are three MSP categories: Qualified Medicare Beneficiaries (QMB); Specified Low-Income Medicare Beneficiaries (SLMB); and Additional Low-Income Beneficiaries (ALMB). BEM

165 (October 2022), p. 1. QMB is a full coverage MSP that pays Medicare premiums (Medicare Part B premiums and Part A premiums for those few people who have them), Medicare coinsurances, and Medicare deductibles. SLMB pays Medicare Part B premiums and ALMB pays Medicare Part B premiums provided funding is available. BEM 165, pp. 1-2.

The Department will consider the value of cash assets in determining a client's asset eligibility for MSP. Cash assets include money/currency, uncashed checks, drafts, and warrants, as well as, money in checking, savings, money market, and/or certificate of deposit (CD or time deposit) accounts. BEM 400, pp. 14-18. An asset must be available to be countable. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p. 10. Asset eligibility will exist 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, p. 6. For MSP eligibility, countable assets cannot exceed the asset limit outlined in BEM 400 and countable assets are determined based on MA policies in BEM 400, 401, and 402. BEM 165, p. 8. For MSP cases, effective January 1, 2023, the asset limit for Petitioner's asset group size of one is \$9,090. BEM 400, pp. 7-8; BEM 211 (October 2023), pp. 1-9.

The Department representative testified that in making its determination that Petitioner had excess assets, it considered the value of her cash assets, specifically, the account balances reflected on the typed statement attached to the DHS 1004 Questionnaire Petitioner submitted in connection with her MSP application. (Exhibit A, pp.22-28). The Department representative testified that it considered the value of two CD accounts reflected on the list of assets submitted by Petitioner, and which were also identified on an asset detection report completed by the Department. (Exhibit A, pp. 22-28,40-44). According to the documentary evidence presented at the hearing, the cash value in the CD accounts considered was [REDACTED] (Exhibit A, pp. 40-44). It is noted that additional bank accounts were discovered as being associated with Petitioner on the asset detection report completed by the Department. Furthermore, Petitioner identified several other bank accounts with countable cash assets, and other types of countable assets that the Department testified it could have considered, but did not, as Petitioner was deemed asset ineligible just based on the value of the two CD accounts considered. The Department representative testified that Petitioner was advised of her ineligibility and the denial of her request for MSP benefits through the issuance of the December 26, 2023, Health Care Coverage Determination Notice.

At the hearing, Petitioner testified that she is the sole owner of a Limited Liability Company (LLC), and her business involves buying, remodeling, and selling real estate. Petitioner testified that her business and personal bank accounts are intertwined and that she has used money from her personal savings accounts to purchase properties for her business. Petitioner argued that because her personal and business bank accounts are intertwined, all of her personal cash assets should be excluded and not considered by the Department in determining her MSP eligibility. Petitioner did not dispute the cash values relied upon by the Department with respect to the two CD accounts considered and confirmed that the CD accounts were her own personal accounts. Petitioner further

confirmed that at no point during the application month of [REDACTED] 2023 was the value in the CD accounts less than \$ [REDACTED]

Although Petitioner initially asserted that all of her personal funds are also used for her business, Petitioner did not establish that the CD accounts in question were used for her business. Furthermore, later in the hearing, Petitioner testified that only about \$ [REDACTED] of the cash in her bank accounts is used towards her business and the remainder is to be untouched until she retires. Petitioner explained that she was given a gift of \$ [REDACTED] from her parents under the condition that the funds were only to be used for her retirement. Petitioner asserted that she is not retired and maintained the belief that it would be irresponsible and inappropriate to spend her retirement savings on daily living expenses and Medicare premiums prior to her retirement. Petitioner conceded that no written contract existed with respect to the \$ [REDACTED] gift and that the promise she made to not spend the funds prior to retirement was verbal. Petitioner further confirmed that the \$ [REDACTED] is spread across several personal bank accounts, unaffiliated with her business, and that she has the legal right to use and dispose of the cash.

During the hearing, the business account exclusion provision of BEM 400 was discussed. Department policy provides that for SSI-related MA programs, the exclusion can be used only if the funds are **not** comingled with countable assets and **not** in time deposits. The Department will exclude a savings, share, checking, or draft account used solely for the expenses of a business. BEM 400, pp. 23-24. Upon review, the Department properly determined that Petitioner's assets did not meet the criteria of the business account exclusion, as per Petitioner's testimony, many of her business accounts are comingled with her countable personal assets, and some, in CD accounts which are not to be excluded. It is also noted that even if the Department would have excluded the cash value of Petitioner's business accounts from consideration, Petitioner admittedly had at least \$ [REDACTED] in personal bank accounts with funds available for her use.

Petitioner further asserted that it was age discrimination for the Department to subject her to an asset test just because she turned age 65 and enrolled in Medicare. Petitioner offered no legal support for her arguments, however. As the Court stated in *ER Drugs v Dep't of Health and Human Servs*, 341 Mich App 133, 146-147; 988 NW2d 826 (2022):

It is not sufficient for a party simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Wilson v. Taylor*, 457 Mich. 232, 243, 577 N.W.2d 100 (1998) (quotation marks and citation omitted).

Furthermore, pursuant to the Delegation of Authority issued by the Director of the Department of Health and Human Services appointing administrative law judges with

the Michigan Office of Administrative Hearings and Rules the authority to conduct hearings and issue final decisions and orders, “administrative law judges have no authority to make decisions concerning the constitutionality of Department policies, to overrule statutes, to overrule promulgated regulations, or to overrule or make exceptions to MDHHS policy.” (See Delegation of Authority issued on October 30, 2020, by Robert Gordon, then Director, Michigan Department of Health and Human Services)

Upon thorough review and notwithstanding the arguments offered by Petitioner during the hearing, based on the evidence presented, including the disclosures on the Questionnaire submitted by Petitioner with the attachments, the asset detection report presented for review, and Petitioner’s testimony, the evidence was sufficient to show that the value of Petitioner’s available personal cash assets exceeded the \$ [REDACTED] limit for MSP eligibility.

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 concluded that Petitioner was ineligible for MSP benefits due to excess assets and subsequently denied her [REDACTED] 2023, MSP application.

DECISION AND ORDER

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

ZB/ml



Zainab A. Baydoun
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:

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Via First Class Mail:

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