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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: April 25, 2023
MOAHR Docket No.: 23-001554
Agency No.: ██████████
Petitioner: ██████████

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 conducted via telephone conference line on April 17, 2023. Petitioner participated and was unrepresented. ██████████, Petitioner's spouse (hereinafter, "Spouse"), testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Rosemary Molsbee-Smith, specialist.

ISSUE

The issue is whether MDHHS properly denied Petitioner's Medical Assistance (MA) application.

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 ██████████ 2023, Petitioner applied for MA benefits for herself and Spouse.
2. As of January 2023, Spouse was over █ years old, married, not a caretaker to minor children, and a recipient of Medicare.
3. As of January 2023, Spouse had an Individual Retirement Account (IRA) and 401k with assets of approximately \$████████ and \$████████, respectively. Petitioner and Spouse additionally had bank accounts with balances exceeding \$████████.
4. On an unspecified date, MDHHS denied MA to Spouse due to a failure to verify assets.

5. On March 14, 2023, Spouse requested a hearing to dispute the denial of MA benefits for himself.
6. On March 24, 2023, MDHHS reprocessed Spouse's MA application and denied the application due to excess assets.

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).

Spouse requested a hearing to dispute a denial of MA benefits. Exhibit A, pp. 4-7. Spouse applied for MA benefits on January 4, 2023. MDHHS testified that it initially denied MA benefits due to a failure to verify assets.¹ MDHHS further testified it later reprocessed Spouse's MA application and again denied after verifying Spouse's assets. A Health Care Coverage Determination Notice dated March 14, 2023, stated that Spouse was denied MA benefits due to excess assets. Exhibit A, pp. 9-14.

MA (also known as Medicaid) includes several sub-programs or categories. BEM 105 (January 2021) p. 1. 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 (HMP) is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.*

MA categories based on MAGI methodology do not require proof of assets. BEM 400 (January 2020) p. 3. MDHHS is to consider assets at application when determining MA eligibility for SSI-Related categories. *Id.*, p. 61. For a denial of MA based on excess assets, it must first be determined if an asset test is necessary by determining which MA categories Spouse was potentially eligible to receive.

It was not disputed that Spouse was a Medicare recipient. As a Medicare recipient, Spouse is not eligible for HMP (see BEM 137). There was no evidence that Spouse was pregnant, a caretaker to minor children, or met any requirement for other MA categories based on MAGI methodology.

¹ MDHHS presented a Verification Checklist (VCL) dated January 6, 2023, and asset and self-employment forms sent to Petitioner with the VCL. Exhibit A, pp. 15-41.

As a person over the age of 65 years, Spouse is potentially eligible to receive Medicaid under Aged/Disabled-Care (AD Care). AD Care is an SSI-Related MA category. BEM 163 (July 2017) p. 1. Because Spouse is only potential to receive Medicaid under an SSI-Related MA category, an asset test is required.

For SSI-Related MA, all types of assets, including retirement plans such as an IRA, 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.*

Spouse testified that he had an IRA valued at over \$[REDACTED]. Spouse also testified to having a 401k with a value over \$[REDACTED]. Spouse additionally testified that he and Petitioner had bank accounts with balances exceeding \$[REDACTED].

Spouse and Petitioner were married. The SSI-Related Medicaid asset limit for a married individual is \$3,000. *Id.*, p. 8. Evidence of any withdrawal penalty was not presented, but any penalty is presumed to not result in countable assets below the \$3,000 asset limit. Given the evidence, MDHHS properly denied Medicaid to Spouse due to excess assets.

Spouse's receipt of Medicare eligibility renders Spouse also potentially eligible for Medicare Savings Programs (MSP). A person entitled to Medicare Part A, hospital insurance, may be eligible for MSP. BEM 105 (April 2017) p. 1. MSP is an MA program which may pay for a client's Medicare deductibles, premiums, and/or coinsurances. BEM 165 (October 2022) p. 2.

MSP is an SSI-Related MA category. BEM 165 (October 2022) p. 1. For MSP eligibility, countable assets may not exceed the asset limits of BEM 400. *Id.*, p. 8. However, the asset limit for MSP is different than Medicaid. Effective January 2023, the asset limit for a two-person MSP benefit group is \$13,600. BEM 400 (January 2023) p. 8. Again, evidence of a withdrawal penalty was not presented, but the amount is presumed to not drop Petitioner's assets exceeding \$[REDACTED] below the \$13,600 asset limit. Given the evidence, MDHHS properly denied MSP benefits to Spouse due to excess assets.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Spouse's application for MA benefits dated [REDACTED] 2023. The actions taken by MDHHS are **AFFIRMED**.

CG/mp



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
MDHHS-Oakland-DistrictII-Hearings
EQAD Hearings
M. Schaefer
MOAHR
BSC4

Via-First Class Mail :

Petitioner

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

Authorized Hearing Rep.

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