



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

MARLON BROWN
DIRECTOR

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Date Mailed: June 28, 2024
MOAHR Docket No.: 24-003587
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 zoom videoconference hearing was held on June 6, 2024, from Lansing, Michigan. The Petitioner was represented by Attorney David Shaltz. The Department of Health and Human Services (Department) was represented by Assistant Attorney General Kelly Carter. Ann Miller Long Term Care Eligibility Specialist appeared and testified for the Department. Department Exhibit A, pp. 2-82 was received and admitted. Petitioner Exhibit 1, pp. 1-4 was received and admitted. Petitioner's Attorney submitted a Prehearing Brief that was reviewed and considered.

ISSUE

Did the Department properly deny Petitioner's Medical Assistance Long Term Care (MA-LTC) application because Petitioner's spouse failed to verify income and 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. On [REDACTED] 2023, Petitioner applied for MA-LTC.
2. Petitioner submitted an Assignment of Rights to Support dated November 6, 2023, with her MA-LTC application. (Ex. A, pp. 36-37)
3. On December 5, 2023, Verification Checklists were sent to Petitioner's representative and Petitioner's spouse requesting income and asset verifications. (Ex. 1, pp. 49-56)

4. On January 9, 2024, a Health Care Coverage Determination Notice was sent to Petitioner informing her that her MA-LTC application was denied with the following explanation: "The Medicaid application for [REDACTED] has been denied. The assignment of rights to support has no effect for obtaining Medicaid eligibility in Michigan. The community spouse's assets cannot be excluded, and an initial asset assessment still needs to be completed. Policy states that refusal of the community spouse to provide necessary information or verification about his assets results in ineligibility for the client." (Ex. A, p.85)
5. Petitioner's husband, through his attorney, submitted a letter dated September 25, 2023, which indicated his unwillingness to provide any financial information to the Department. (Ex. 1, p. 35)
6. On August 23, 2012, Petitioner and her husband entered into a postnuptial agreement. (Ex. 1, pp. 28-34)
7. On April 1, 2024, Petitioner requested hearing disputing the denial of MA-LTC. (Ex. 1, pp. 4-6)

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.

INFORMATION UNAVAILABLE

SSI-Related MA Only

A spouse remains the applicant's spouse for Medicaid eligibility until there is a Judgment of Divorce. If the community spouse's whereabouts are unknown (a couple separated prior to the client entering an LTC/hospital setting and the client does not know where the spouse is living or how to contact the spouse), the client's countable assets are compared to the appropriate asset limit in BEM 400 to determine eligibility. Refusal of the community spouse to provide necessary information or verification about his assets results in ineligibility for the client. BEM 402

(3)Assignment of support rights

The institutionalized spouse shall not be ineligible by reason of resources determined under paragraph (2) to be available for the cost of care where—

- (A) the institutionalized spouse has assigned to the State any rights to support from the community spouse;
- (B) the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the State has the right to bring a support proceeding against a community spouse without such assignment; or
- (C) the State determines that denial of eligibility would work an undue hardship. 42 USC 1396r-(5)(c)(3).

In this case, the Department's position is that since Petitioner is still married, her husband's income and assets must be considered in determining Petitioner's eligibility for MA-LTC. Furthermore, by all accounts, Petitioner's husband refuses to provide necessary information and verifications about his assets. The Department argued that policy clearly states that refusal of the community spouse to provide necessary information results in ineligibility for the client. BEM 402

Petitioner argued that BEM 402 is unlawful and inconsistent with 42 USC 1396r-(5)(c)(3). Petitioner requested the undersigned Administrative Law Judge to issue a recommended decision on that basis in accordance with BAM 600, pp. 39-40. Petitioner asserts that Petitioner has exhausted all her resources and is indigent and argues that she should not be barred from Medicaid eligibility due to factors beyond her control. Petitioner argues that by assigning her rights to spousal support to the State, the Department can step in and request spousal support and determine whether Petitioner's spouse has resources that can assist in paying for Petitioner's care. Petitioner argues that the Michigan Medicaid State Plan requires that Department policy be consistent with Section 1924 of the Social Security Act and that the provision in BEM 402 is not consistent with the statute and therefore violates the Michigan Medicaid State Plan.

Petitioner and her husband are still married, and Petitioner knows where her husband is located and how to contact him. Petitioner has made attempts, and the Department has made attempts to get financial information from Petitioner's husband. The Department put policy in place to impose consequences when a community spouse flatly refuses to provide necessary information because otherwise there would no incentive for the community spouse to cooperate. BEM 402 does allow for eligibility to be determined in circumstances where the whereabouts of the community spouse are unknown. However, that is not the circumstance in this case. It was not clearly established that Petitioner has no other means to obtain asset and income information from her husband. The provision is BEM 402 that requires that refusal of the community spouse to provide necessary information or verification about his assets results in ineligibility for the client applies to the circumstances in this case and is a reasonable interpretation of the underlying statutory provisions.

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 MA-LTC application because Petitioner's husband refused to provide necessary information.

DECISION AND ORDER

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

AM/cc



Aaron McClintic

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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