Michigan Office of Administrative Hearings and Rules
P.O. Box 30639
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Date Mailed: May 13, 2025
Docket No.: 25-010974
Case No.: [redacted]
Petitioner: [redacted]

[redacted]
MI [redacted]

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 by telephone on April 17, 2025.

The Department of Health and Human Services (Department) was represented by Assistant Attorney General for the State of Michigan, Scott R. Rothermel (P70711). Petitioner's authorized representative and spouse, Jeffrey Kropiewnicki (Spouse), was present and represented by their counsel, Andrew F. Wood (P77321), and Kenneth A. Puzycki (P45404).

Rhonda Brewer, Eligibility Specialist with the Department, was sworn in as a witness for the Department. [redacted], Petitioner's husband, was sworn in as a witness for Petitioner.

ISSUE

Did the Department properly deny Petitioner's application for Medicaid (MA) due to excess assets?

STIPULATED FACT

The parties stipulated to the following, which the Administrative Law Judge accepts and incorporates as a material fact:

1. The only issue in dispute was whether Spouse's 401(k) plan, through [redacted] (TRG Plan), was a countable asset.

FINDINGS OF FACT

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

1. As of June 3, 2024, Petitioner had been or was expected to be in a hospital or nursing home for at least 30 consecutive days. (Exhibit A, p. 23).

2. On [redacted] 2024, the Department received a completed application for MA for Petitioner. The application reported that Petitioner was married and had assets that included a retirement plan, a home, and vehicles, among others. (Exhibit B, pp. 1 – 14).

3. As of June 25, 2024, Petitioner was [redacted] years old, disabled, Medicare recipient, and married to Spouse, who was [redacted] years old. (Exhibit A, pp. 4, 6 – 7; Exhibit B, pp. 3).

4. On [redacted], 2024, Spouse turned [redacted] years old.

5. On September 16, 2024, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) that denied Petitioner MA effective June 1, 2024, due to excess assets. (Exhibit A, pp. 26 – 28).

6. On November 7, 2024, the Department completed an Initial Asset Assessment (IAA) and determined Petitioner and Spouse had $[redacted] in total countable assets and Petitioner's portion of countable assets was $[redacted]. Petitioner's portion of the countable assets included TRG Plan with a value in excess of $[redacted]. (Exhibit A, pp. 23 – 25; Exhibit C, p. 2).

7. On December 17, 2024, the Department sent Petitioner a notice that denied Petitioner MA due to excess assets.

8. On [redacted] 2024, Spouse turned [redacted] years old.

9. On March 13, 2025, the Department received a request for hearing on Petitioner's behalf from her counsel, disputing the Department's determination as to Petitioner's countable assets. (Exhibit A, pp. 3 – 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.

Petitioner requested a hearing to dispute the Department's denial of her application for MA. The Department denied Petitioner for MA due to excess assets.

The parties stipulated that the only asset at issue is Spouse's TRG Plan. It is Petitioner's position that Spouse's TRG Plan is an excluded asset because he cannot withdraw any funds from the plan until he is [redacted] years old. It is the Department's position that the whole of Spouse's TRG plan is an available countable asset because funds have been disbursed to Spouse from the plan in the past. Although the parties disagreed on the exact value, there was no dispute that value of the TRG Plan was in excess of $[redacted].

Based on Petitioner's circumstances as a Medicare recipient and disabled individual, she was potentially eligible for SSI-related MA coverage only, under AD-Care MA or Group 2 Aged, Blind and Disabled (G2S) MA. 42 CFR 435.911; 42 CFR 435.100 to 435.172; BEM 105 (January 2024), pp. 1 – 2; BEM 137 (January 2024), p. 1; BEM 124 (July 2023), p. 1. The AD-Care program is a Group 1, full-coverage, SSI-related MA program for individuals who are income-eligible based on their MA fiscal group size, while G2S is an SSI-related MA program which provides for MA coverage with a monthly deductible. BEM 163 (July 2017), p. 1; BEM 166 (April 2017), p. 1; see also BEM 211 (October 2023), pp. 7 – 8.

As SSI-related MA programs, both AD-Care MA and G2S have an asset test and require the Department to consider a client's countable assets when determining eligibility for those categories. BEM 400 (June 2024), pp. 1, 7. Assets are countable if they are available, as defined by policy, and are not excluded. BEM 400, pp. 2 – 3. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p. 10. For SSI-related MA, all assets are presumed to be available unless evidence shows that it is not available. BEM 400, p. 11. For purposes of SSI-related MA, countable assets include retirement plans, and the value of those assets cannot exceed the applicable limit, which was $3,000 for married individuals, such as Petitioner, at the time of Petitioner's MA application. BEM 402 (January 2024), pp. 3 – 5; BEM 400, pp. 8 – 9, 29 – 30; BEM 211 (October 2023), pp. 7 – 8.

The value of a retirement plan, including a 401(k) plan, is the amount of money the person can currently withdraw from the plan, minus any early withdrawal penalty but not the amount of any taxes due. BEM 400, pp. 29 – 30. However, funds in a retirement plan are not available if the person must quit his job to withdraw any money. BEM 400, p. 30. The value of a retirement plan is verified with a written statement from the plan administrator or a current plan statement. BEM 400, p. 69.

The terms of a 401(k) plan are identified in both a summary plan description (SPD)[1], which identifies specific provisions of the plan, and the full plan itself. Provisions of a 401(k) plan include under what circumstances, if any, a plan participant may take withdrawals.

In this case, Spouse participates in TRG Plan. Based on past disbursements made to Spouse from TRG Plan, the Department concluded that Spouse was able to withdraw from the plan without leaving his employment, and that as a result, the entire value of Spouse's retirement plan was a countable asset for purposes of determining Petitioner's MA eligibility.

A review of the SPD and full plan provisions of TRG Plan established that while Spouse is still employed by TRG and less than [redacted] years of age, he is not generally eligible for in-service withdrawals. (Exhibit 3, pp. 29 – 32, 86). TRG Plan only allows an employed plan participant, such as Spouse, to take in-service withdrawals from the plan under the following two circumstances:

- Once he has turned [redacted] years old (TRG Plan, Section G.4.a.ii.), or

- If he qualifies for a hardship withdrawal pursuant to the criteria set forth in Section 8.01(b) of the plan (TRG Plan, Section G.2.b, G.2.d.i.).

(Exhibit 3, pp. 3 – 38).

There was no dispute that Spouse was not [redacted] years old at the time of Petitioner's application. Therefore, the only in-service withdrawal potentially available to Spouse was a hardship withdrawal.

A review of Section 8.01(b) of TRG Plan establishes that the criteria for a hardship withdrawal under the plan is limited to situations in which the plan administrator finds that the plan participant, such as Spouse, has an "immediate and heavy financial need…[and] lacks other available resources." (Exhibit 3, p. 98). TRG Plan identifies the specific needs that may be considered by the plan administrator to be "immediate and heavy"; one of which are expenses for medical care for the plan participant or his

[1] 29 CFR 2520.102-3, 2520.102-4.

spouse that would be tax deductible under 26 USC 213(d). (Exhibit 3, p. 98). However, if the hardship withdrawal is approved, the amount is limited to the amount necessary to satisfy the immediate and heavy financial need, including any income taxes or penalties resulting from the distribution. (Exhibit 3, pp. 75, 98). Because there was no evidence that Spouse was eligible or ineligible for a hardship withdrawal, or the cost of Petitioner's tax deductible medical expenses if Spouse was determined to be eligible, the Department failed to meet its burden of establishing that any or all of Spouse's TRG Plan was a countable asset for the purposes of determining Petitioner's MA eligibility.

In addition to the foregoing, because both parties identified the nature of the past disbursements made to Spouse from TRG Plan, in the form of "refunds" and "loans", as a pivotal issue of contention, the undersigned will also address the issues briefly.

Sponsors of traditional 401(k) plans must conduct non-discrimination tests, as required by Internal Revenue Service (IRS) regulations, of their plan each year to ensure that the contributions made by and for rank-and-file employees (non-highly compensated employees (NHCE)) are proportional to contributions made for owners and managers (highly compensated employees (HCE)).[2] When contributions of HCEs cause the plan to violate IRS non-discrimination requirements, the plan must either make additional contributions to NHCEs or issue refunds of contributions made by HCEs, or the plan may lose its tax-qualified status. 26 USC 401(k)(8); IRS Rev Proc 2021-30.

Although the Department testified that Spouse withdrew contributions in 2017, 2018, 2019, and 2020, the evidence established that the TRG Plan issued refunds of plan contributions to Spouse in those years based on the Plan's annual testing and Spouse's contributions as a HCE pursuant to IRS requirements to allow the plan to maintain tax-qualified status. (Exhibit A, pp. 19 – 20; Exhibit 1, pp. 5 – 6). Because the refunds were required by the IRS non-discrimination tests to allow the entire plan to continue, and not disbursed at the discretion or request of Spouse, the Department failed to establish that the refunds issued to Spouse by TRG Plan were withdrawals within the meaning of BEM 400.

Loans permitted by a 401(k) plan are not withdrawals, but may become distributions pursuant to the Internal Revenue Code if, and only at such time as, the plan participant fails to repay the loan according to the terms of the loan. 26 USC 402(c)(3)(C)(ii). The evidence established that Spouse previously took two loans. However, there was no evidence that Spouse failed to repay the loans according to their terms. Therefore, Spouse's prior loans from his vested account balance with TRG Plan were not withdrawals within the meaning of BEM 400.

Additionally, under the terms of TRG Plan, a plan participant may only borrow: a) a maximum aggregate amount of up to $50,000, minus the highest outstanding loan

[2] 26 USC 401(k); IRS Revenue Procedure 2021-30 (IRS Rev Proc 2021-30), Appendix B, Section 2; see also https://www.irs.gov/retirement-plans/401k-plan-fix-it-guide-the-plan-failed-the-401k-adp-and-acp-nondiscrimination-tests. Last accessed May 6, 2025.

balances of the participant within the prior year, or b) 50% of the participant's vested account balance; whichever amount is less. (Exhibit 3, p. 101). Further, any loan made to a TRG Plan participant is secured by no more than one-half of the vested portion of the participant's account balance. (Exhibit 3, p. 101).

In sum, the contribution refunds and loans received by Spouse were not withdrawals within the meaning of BEM 400, and although the evidence established that Spouse *may be eligible* to an in-service hardship withdrawal, he is not *entitled* to one, and if he were approved for such a withdraw, the amount of the withdrawal is limited. Thus, the countable value of Spouse's TRG Plan, if any, for purposes of Petitioner's MA eligibility, is subject to a) the limitations for approving hardship withdrawals as identified in TRG Plan, and b) the amount of any allowed hardship withdrawal.

Based on totality of the evidence, the Department failed to establish that it properly concluded that 100% of Spouse's TRG Plan was a countable asset. Therefore, the Department failed to establish that it properly determined Petitioner had excess assets for purposes of MA eligibility.

DECISION AND ORDER

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner was ineligible for MA due to excess assets.

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Redetermine Petitioner's eligibility for MA for June 2024 ongoing, including redetermining the countable value, if any, of Spouse's TRG Plan;

2. If eligible, provide Petitioner with the most beneficial MA coverage she is eligible to receive from June 2024 ongoing; and

3. Notify Petitioner of its decision in writing.

CARALYCE M. LASSNER
ADMINISTRATIVE LAW JUDGE

APPEAL RIGHTS: Petitioner may appeal this Hearing Decision to the circuit court. Rules for appeals to the circuit court can be found in the Michigan Court Rules (MCR), including MCR 7.101 to MCR 7.123, available at the Michigan Courts website at courts.michigan.gov. The Michigan Office of Administrative Hearings and Rules (MOAHR) cannot provide legal advice, but assistance may be available through the State Bar of Michigan at https://lrs.michbar.org or Michigan Legal Help at https://michiganlegalhelp.org. A copy of the circuit court appeal should be sent to MOAHR. A circuit court appeal may result in a reversal of the Hearing Decision.

Either party who disagrees with this Hearing Decision may also send a written request for a rehearing and/or reconsideration to MOAHR within 30 days of the mailing date of this Hearing Decision. The request should include Petitioner's name, the docket number from page 1 of this Hearing Decision, an explanation of the specific reasons for the request, and any documents supporting the request. The request should be sent to MOAHR

- by email to MOAHR-BSD-Support@michigan.gov, **OR**
- by fax at (517) 763-0155, **OR**
- by mail addressed to
  Michigan Office of Administrative Hearings and Rules
  Rehearing/Reconsideration Request
  P.O. Box 30639
  Lansing Michigan 48909-8139

Documents sent via email are not secure and can be faxed or mailed to avoid any potential risks. Requests MOAHR receives more than 30 days from the mailing date of this Hearing Decision may be considered untimely and dismissed.

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