

██████████,

APPELLANT

v.

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* BEFORE LEIGH WALDER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
* OAH No.: MDH-██████████-10A-20-11819

* * * * *

DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSION OF LAW
ORDER

STATEMENT OF THE CASE

On December 13, 2019, ██████████ (Appellant) filed an application to receive Medical Assistance Long Term Care (MA-LTC) benefits. On March 26, 2020, the Bureau of Long-Term Care Eligibility (local department),¹ on behalf of the Maryland Department of Health (MDH), denied the application because the Appellant’s resources exceeded the maximum allowable amount of \$2,500.00 as of December 1, 2019. On May 21, 2020, the Appellant appealed the local department’s action.²

On September 16, 2020, I held a telephone hearing. Code of Maryland Regulations (COMAR) 10.01.04; COMAR 28.02.01.20B. ██████████, Appeals Specialist, represented the

¹ Applications for MA-LTC benefits filed by residents of ██████████, ██████████ and ██████████ Counties and ██████████ are processed by the Bureau of LTC Eligibility, located at the ██████████ ██████████ offices in ██████████, Maryland. In other counties, such applications are processed by the local departments of social services. The regulations applicable to MA-LTC use the general term “local department” to refer to the entity that processes an application.

² The appeal was filed by the Appellant’s authorized representative. COMAR 10.01.04.12.

local department. [REDACTED], Regional Medicaid Manager for the Corporate Officers of [REDACTED], represented the Appellant. COMAR 10.01.04.12. The Appellant was not present.

The contested case provisions of the Administrative Procedure Act, the Rules of Procedure of the Office of Administrative Hearings (OAH), and the procedures for Fair Hearing Appeals under the Maryland State MA Program govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 28.02.01; and COMAR 10.01.04.

ISSUE

Was the local department's decision that the Appellant was not eligible for MA-LTC because she had overscale resources correct?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibit on behalf of the local department:

LD Ex. 1 – Summary for Appeal Hearing, dated September 9, 2020, with the following attachments:

- Pages 1-18 – LTC Application, dated December 13, 2019
- Pages 19-21 – Letters from [REDACTED] Insurance Company, dated February 5 and 11, 2020
- Pages 22-31 – Copies of checks, dated February 12 and 14, 2020
- Pages 32-34 – Bank statement, dated November to December 2019
- Pages 35-38 – Letter from the local department to the Appellant, dated March 26, 2020
- Pages 39-42 – Letter from the local department to the Appellant, dated March 26, 2020
- Pages 43-46 – Letter from the local department to the Appellant, dated March 26, 2020

I admitted the following exhibits on behalf of the Appellant, except as noted:

App. Ex. 1 – Irrevocable Assignment of Policy Proceeds, dated October 23, 2019; Letter from the [REDACTED] County Department of Aging, dated November 21, 2019; bank statement, dated March to April 2016; check, dated March 5, 2016; bank statement, dated February to March 2016; check, dated January 18, 2016; bank statement,

dated December 2015 to January 2016; check, dated November 25, 2015; bank statement, dated September 30, 2019

App. Ex. 2 – Not offered

App. Ex. 3 – Letter from [REDACTED] Insurance Company, dated February 11, 2020; Policy Surrender Request, dated February 5, 2020

App. Ex. 4 – Timeline narrative, undated

Testimony

Ms. [REDACTED] testified for the local department.

Ms. [REDACTED] testified on behalf of the Appellant.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

- 1) On October 23, 2019, the Appellant filled out an “Irrevocable Assignment of Policy Proceeds” to assign policy proceeds from five life insurance policies, ending [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], to [REDACTED] Funeral Home.
- 2) On December 13, 2019, an application for MA-LTC benefits was filed on behalf of the Appellant for the six-month period beginning that month.
- 3) On the application, the Appellant listed that she held assets in two bank accounts, as follows:
 - (a) Checking account ending [REDACTED] \$1,000.00; and
 - (b) Savings account ending [REDACTED], \$1,074.00.
- 4) When the local department received a bank statement to verify the Appellant’s assets, it listed the following amounts, totaling \$2,834.21:
 - (a) Checking account ending [REDACTED], \$1,760.10; and
 - (b) Savings account ending [REDACTED], \$1,074.11.

5) At the time of application, the Appellant held life insurance policies, totaling \$2,624.45, with cash values as follows:

- (a) Policy ending ■■■, \$438.28;³
- (b) Policy ending ■■■, \$438.47;
- (c) Policy ending ■■■, \$401.33;
- (d) Policy ending ■■■, \$945.21; and
- (e) Policy ending ■■■, \$401.16.

6) The Appellant did not list the five life insurance policies as assets on the application.

7) On January 27 and 28, 2020, the facility where the Appellant resides called the insurance company to inquire about the five insurance policies, and the insurance company notified the facility that the policies could not be irrevocably assigned.

8) On February 11, 2020, the life insurance company sent a letter to the Appellant that it could not irrevocably assign the policy proceeds from the five life insurance policies to ■■■■ Funeral Home under the terms of the contract.

9) On or about February 12, 2020, the life insurance company sent the Appellant the cash value of all five policies, via five checks.

10) On February 21, 2020, the Appellant received the five checks.

11) By February 26, 2020, the Appellant remitted the cash value of all five checks to the facility.

³ Policy ending ■■■ was not included on the local department's Summary for Appeal Hearing, but can be found on LD Ex. 1, p. 31.

12) On March 26, 2020, the local department notified the Appellant that her application for MA-LTC benefits was denied because her resources exceeded the maximum allowable amount of \$2,500.00.

13) The local department used the following calculation to determine excess resources: total insurance policy assets (\$2,624.45) + total bank account assets (\$2,834.21) = \$5,458.66 minus \$2,500.00 = \$2,958.66 overscale.

14) Eventually, the Appellant began receiving MA-LTC benefits as of March 1, 2020; the local department continued to deny the Appellant MA-LTC benefits for December 2019, January 2020, and February 2020.

DISCUSSION

The Medicaid Program established by Title XIX of the Social Security Act, codified at 42 U.S.C.A. §§ 1396 - 1396w-5 (2012 & Supp. 2019) (Medicaid Act),⁴ is a joint federal-state program designed to provide “health care services for indigent individuals or medically indigent individuals or both.” Md. Code Ann., Health-Gen. § 15-103(a)(2)(i) (2019); 42 U.S.C.A. § 1396a (Supp. 2019). In Maryland, Medicaid is referred to as MA. The MA program is administered by the State through the MDH. *Dep’t of Health & Mental Hygiene v. Campbell*, 364 Md. 108, 112 (2001). Local departments of social services, in turn, administer the MA program for the MDH at the county level.

There is no clear statutory or regulatory authority establishing which party bears the burden of proof in this case. *See* COMAR 10.01.04.01 through 10.01.04.12 (procedural rights, advice, and notifications). Under the OAH’s Rules of Procedure, “[u]nless otherwise provided by law: the standard of proof is by a preponderance of the evidence [and a] party asserting [a] . . . right . . . bears the burden of proof regarding the . . . right[.]” COMAR 28.02.01.21K(1), (2)(a). Here, the

⁴ U.S.C.A. is an acronym for the United States Code Annotated.

Appellant asserts that she should receive MA-LTC benefits. As such, I conclude the Appellant has the burden of proof in this matter. *Id.* To prove something by a “preponderance of the evidence” means “to prove that something is more likely so than not so,” when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

As a general matter, one seeking MA-LTC must submit an application to the responsible local department of social services and must meet both financial and non-financial eligibility requirements. COMAR 10.09.24.04-1B(1); 10.09.24.05 through .05-5; 10.09.24.07, and 10.09.24.08. What is disputed in this matter is whether the Appellant met the resource limit for a medically needy individual for the months of December 2019, January 2020, and February 2020. Financial eligibility shall be determined on the basis of the countable resources and income of members of the assistance unit. COMAR 10.09.24.10B(1). “Resources” is defined as “accumulated personal wealth over which a person has the authority or power to liquidate his interest, including cash savings, savings accounts, certificates of deposit, money market certificates, checking accounts, stocks, bonds, cash value of life insurance, burial plots, prepaid burial plans, real property, personal property, mortgages, and mutual funds.” COMAR 10.09.24.02B(53).

The local department argued that the Appellant was not eligible for MA-LTC benefits during December 2019, January 2020, and February 2020, as the Appellant’s resources exceeded the allowable resource limit of \$2,500.00, by \$2,958.66. As support, the local department presented evidence that the Appellant had a combined total of \$2,834.21 in bank account assets, and a combined total of \$2,834.21 in life insurance policy assets. (LD Ex. 1, pp. 21-34). As such, the local department argued that it properly denied the Appellant MA-LTC benefits for having overscale resources.

The Appellant argued that prior to submitting the December 13, 2019 application for MA-LTC benefits, she attempted to irrevocably assign the policy proceeds from the five life insurance policies to ██████████ Funeral Home. (App. Ex. 1). As such, the Appellant argued that she did not disclose the cash value of the insurance policies as assets on the MA-LTC application because she thought they had been irrevocably assigned. Further, the Appellant argued that once the insurance company disclosed that the policies could not be reassigned, the Appellant immediately cashed out the policies and submitted the proceeds to the facility. Thus, the Appellant argued that she complied with all requirements of the application process, and good faith efforts were made to obtain MA-LTC benefits.

After considering the arguments, for the following reasons, I agree with the local department. To be eligible for MA-LTC benefits, the Appellant's financial resources needed to be less than \$2,500.00. *See* COMAR 10.09.24.10B(1). The cash value of the five insurance policies, combined with the money in the Appellant's bank accounts, placed the Appellant substantially over the \$2,500.00 threshold and remained so from December 13, 2019 through February 26, 2020. This fact is not disputed. Hence, the local department is correct in its assertion that the Appellant had overscale resources during the period in question.

Although the Appellant may have believed that the life insurance policies were irrevocably assigned to ██████████ Funeral Home, the fact remains that they were not. (*See* LD Ex. 1, p. 20). Thus, the cash value of these life insurance policies remained a countable resource, as contemplated in COMAR 10.09.24.02B(53); and, these life insurance policies remained countable resources up until February 26, 2020, when the proceeds were remitted to the facility. Also, it is worth noting that even if the cash value of the life insurance policies were not counted as a resource, the Appellant's bank accounts – alone – were \$334.21 overscale for December 2019.

The Appellant argued that I should consider that all efforts to get her qualified for MA-LTC benefits were made in “good faith,” i.e. the Appellant was unaware that the life insurance policies were technically available, once the Appellant found that these policies were available resources she cashed out these policies, and the cash value of these policies were immediately paid to the facility. As such, the Appellant argued that a “good faith” exemption should be granted so that the Appellant may receive MA-LTC benefits. Within the application process, the concept of “good faith” is contemplated in the MA Manual, but not as applied to this type of situation. Instead, the concept of “good faith” applies when an applicant is unable to obtain hard copy documentation of a requested verification but has made a good faith effort to try and locate the hard copy documentation. *See* MA Manual § 400.19(a), revised July 2012. The concept of “good faith” does not apply to the situation at hand, as hard copies of the requested verifications were located and ultimately provided by the Appellant.

For these reasons, I agree with the local department’s determination that the Appellant was ineligible for MA-LTC benefits for December 2019, January 2020, and February 2020.

CONCLUSION OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Bureau of Long-Term Care Eligibility’s March 26, 2020 decision that the Appellant had overscale resources was correct. COMAR 10.09.24.10B(1); COMAR 10.09.24.02B(53).

ORDER

I **ORDER** that the March 26, 2020, decision of the Bureau of Long-Term Care Eligibility finding the Appellant ineligible for Medical Assistance Long Term Care benefits is **AFFIRMED**.

October 15, 2020
Date Decision Mailed

Leigh Walder
Administrative Law Judge

LW/cmj
#188459

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FILE EXHIBIT LIST

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