

[REDACTED]

APPELLANT

v.

MARYLAND DEPARTMENT

OF HEALTH

* BEFORE LATONYA B. DARGAN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: MDH-MCP-11B-20-17791

* * * * *

DECISION

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

STATEMENT OF THE CASE

On or about March 24, 2020, the Appellant filed an application (Application) for benefits under the Home and Community-Based Options Waiver (HCB Waiver) Program of Maryland Medical Assistance (MA). On or about April 23, 2020, the Eligibility Determination Division (EDD) of the Maryland Department of Health (MDH or Department) issued a notice of eligibility determination in which it advised the Appellant that she was not eligible for the HCB Waiver because her countable resources were overscale. On July 22, 2020, the Appellant filed a request for hearing to challenge the Department's determination.

On November 2, 2020, I conducted a hearing via videoconference. Code of Maryland Regulations (COMAR) 10.01.04.06 and 28.02.01.20B. [REDACTED] the Appellant's son and authorized representative, appeared on behalf of the Appellant. COMAR 10.01.04.12B(3)(e).

[REDACTED] Appeals Representative, EDD, represented the Department.

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

ISSUE

Did the Department properly determine that the Appellant was ineligible for the HCB Waiver due to her countable resources exceeding the applicable program limit?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibit for the Appellant:

APP Ex. 1: Cover letter and bank statement, received on August 24, 2020

I admitted MDH Ex. 1 for the Department and it consisted of the following documents:

- Summary for Appeal Hearing (p. 1)
- Notice of Remote Hearing, issued on August 26, 2020 (p. 2)
- Appeal Request, July 22, 2020 (pp. 3-5)
- Eligibility Determination, April 21, 2020¹ (pp. 6-9)
- Eligibility Determination, April 23, 2020² (pp. 10-12)
- Case History Narrative Notes, printed October 26, 2020 (p. 13)
- Text of COMAR 10.09.24.08 (pp. 14-22)
- Text of COMAR 10.09.54.03 (pp. 23-25)

Testimony

Mr. [REDACTED] testified for the Appellant and did not present other witnesses. Mr. [REDACTED] testified for the MDH and did not present other witnesses.

¹ This version of the determination notice erroneously did not identify the specific financial basis upon which the application was denied.

² This version of the determination notice correctly identified the specific financial basis upon which the application was denied, but it cited the incorrect provisions of COMAR.

FINDINGS OF FACT

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

1. The Appellant filed the Application on or about March 24, 2020.
2. The maximum monthly resource limit for the HCB Waiver is \$2,500.00. If an applicant's resources in the month of application exceed this limit, the applicant is not eligible for the program.
3. As part of the verification process for the Application, the Appellant submitted statements from a checking account with [REDACTED]. On March 1, 2020, the balance in the checking account was \$4,196.00.
4. The Appellant receives a monthly benefit payment from the Social Security Administration (SSA) in the amount of \$1,036.00.
5. The Appellant's other source of income is a family trust, which disburses an annual payment of \$3,000.00 to her. The payment is distributed quarterly, in the amount of \$750.00.³
6. On or about April 23, 2020, the Department determined the Appellant was not eligible for the HCB Waiver because her countable resources exceeded the program limit.

DISCUSSION

LEGAL FRAMEWORK

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. Md. Code Ann., State Gov't § 10-217 (2014); COMAR 28.02.01.21K. To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered.

³ The \$3,000.00 annual payment is the equivalent of \$250.00 per month.

Coleman v. Anne Arundel Cty. Police Dep't, 369 Md. 108, 125 n.16 (2002). Here, the Appellant, as an initial applicant asserting a right or claim to something – namely, that she is eligible for benefits under the HCB Waiver – bears the burden of proof by a preponderance of the evidence. COMAR 28.02.01.21K(1)-(2)(a).

The Health-General Article defines “waiver” as a HCB Waiver, Md. Code Ann., Health-Gen. § 15-132(a)(9) (2019) and “waiver services” as services that:

- (i) Are needed and chosen by an eligible waiver participant as an alternative to admission to or continued stay in a nursing facility;
 - (ii) Are part of a plan of service approved by the program;
 - (iii) Assure the waiver participant's health and safety in the community;
- and
- (iv) Cost no more per capita to receive services in the community than in a nursing facility.

Health-Gen. § 15-132(a)(10).⁴

Section 15-132 also sets forth specific eligibility criteria for the HCB Waiver, which include in pertinent part:

(b) (1) If permitted by the Centers for Medicare and Medicaid Services, an individual shall be determined medically eligible to receive services if the individual requires:

- (i) Skilled nursing care or other related services;

...

(c) The Department's waiver shall include the following:

...

(3) Financial eligibility criteria which include:

- (i) The current federal and State medical assistance long-term care rules for using services provided by a nursing facility, per §§ 1902, 1919, and 1924 of the federal Social Security Act, and applicable regulations adopted by the Department;

- (ii) Medically needy individuals using services provided by a nursing facility under the current federal and State medical assistance eligibility criteria

⁴ Unless otherwise noted, all references to the Health-General Article hereinafter cite the 2019 Replacement Volume.

governed by regulations adopted by the Department and § 1919 of the federal Social Security Act[.]

Health-Gen. § 15-132(b)(1)(i), (c)(3)(i),(ii).

Under the HCB Waiver, therefore, certain services are provided to adults in the community as an alternative to the recipient's admission to a nursing facility. *See* COMAR 10.09.54.03B. An applicant must meet financial criteria in order to be eligible for an HCB Waiver, and with certain exceptions [not relevant here], “[a]ll provisions of COMAR 10.09.24 which are applicable to aged, blind, or disabled institutionalized persons are applicable to waiver applicants and participants,” with certain exceptions not relevant here. COMAR 10.09.54.03C(2).

Title 10, Subtitle 09, Chapter 24 of COMAR governs eligibility for the Maryland MA Program. The eligibility of an aged, blind, or disabled (ABD) individual is determined under the criteria for “MAGI Exempt”⁵ coverage groups, COMAR 10.09.24.01B(2), whose financial eligibility is based on the income and resources of the applicant's assistant unit. COMAR 10.09.24.06A. In order to be eligible for the HCB Waiver, most individuals must meet the resources test for the MAGI-Exempt Medical Assistance category.⁶ The medically needy resource limit for an individual is \$2,500.00, as set forth in Schedule MA-2. COMAR 10.09.24.08M.

To aid it in making eligibility determinations, the Local Department relies on the applicable provisions of COMAR, as well as the guidance provided by the Maryland Medicaid

⁵ “‘MAGI’ means modified adjusted gross income, as calculated for purposes of determining eligibility for insurance affordability programs under the Affordable Care Act.” COMAR 10.09.24.02-1B(5). “‘MAGI exempt coverage group’ means a coverage group as described under Regulation .03 of this chapter whose eligibility is not determined by MAGI or by the Maryland Health Benefit Exchange.” COMAR 10.09.24.02-1B(6).

⁶ Some exclusions, including one for the resources of institutionalized individuals who do not intend to return home, under COMAR 10.09.24.08G also apply under the HCB Program, with the exceptions listed in COMAR 10.09.54.03C(2). None of those exclusions is relevant here.

Eligibility Manual (Manual), revised July 2012.⁷ The Manual often provides in-depth examples of different factual scenarios likely to be encountered by applicants and which caseworkers must assess. The Manual regularly cross-references the COMAR provisions under which the guidance on specific topics is offered.

THE MERITS OF THE CASE

There is no dispute that in the Application month, March 2020, the Appellant's checking account had a balance of \$4,196.10 on the first day of the month. The Appellant's resources for March 2020 exceeded the maximum monthly standard by \$1,696.10. The Appellant argued that her income accumulated in her bank account prior to March 2020 for the following reasons: (i) [REDACTED] paid the Appellant's caretaker directly out of his personal funds; (ii) he also paid the Appellant's monthly rent out of his personal funds after taking over that responsibility from his brother, who passed away; (iii) the Appellant's grandson provides transportation for her to her medical and other appointments, thus saving transportation costs; and (iv) Mr. [REDACTED] would also pay for any personal items the Appellant needed, such as clothing or toiletries, from his personal funds. *See also* MDH Ex. 1, p. 3.

Mr. [REDACTED] explained that he and the Appellant did not understand that it was more prudent to pay the Appellant's caretaker or for the Appellant's personal needs from her personal funds so that she did not have resources accumulating in her bank account. Mr. [REDACTED] produced evidence to demonstrate that the family has since spent the money in the account directly on the Appellant's care and other needs and, as of August 1, 2020, her account balance dropped to \$1,970.13. APP Ex. 1. Additionally, the Appellant only has two sources of income: her SSA benefit and the distribution from her family trust; on a monthly basis, her income is \$1,286.00.⁸ Mr. [REDACTED]

⁷ The Manual can be accessed online at the Maryland Department of Health's website at <https://nmcpl.health.maryland.gov/Pages/MedicaidManual.aspx>.

⁸ \$1,036.00 + \$250.00 = \$1,286.00

testified that without the assistance of the HCB Waiver, eventually he would deplete the personal funds he uses to pay for the Appellant's care.

The Department argued that based on the information it had available to it at the time the EDD reviewed the Application, the denial because of overscale resources was proper. Mr. [REDACTED] explained that in accordance with the guidance of the Manual, resources "are considered as they existed on the first moment of the first day of the current period under consideration." Manual, section 800.3, p. 806. Here, the Application was filed on March 24, 2020. The current period under consideration was March 2020. Based on the bank statements provided to the Department as part of the verification process for the Application, the checking account balance on March 1, 2020, was \$4,196.10, an amount which exceeds the program limit.

I am sympathetic to the Appellant's situation. I understand why her children would be concerned about and mindful of not depleting her personal funds. The controlling regulations are, however, clear. If an applicant's resources exceed the program limits, he or she is ineligible for benefits. COMAR 10.09.24.08L. In the Application month, the Appellant's resources exceeded the HCB Waiver Program limits. The Department had no choice but to deny the Application. The regulations also specify that should there be a subsequent month in which countable resources are less than or equal to the maximum monthly standard, an applicant may reapply for benefits. *Id.*

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Maryland Department of Health's Eligibility Determination Division properly determined that the Appellant is not eligible for a Home and Community-Based Options Waiver. Md. Code Ann., Health Gen. § 15-132(c)(3) (2019); COMAR 10.09.24.08L, M; COMAR 10.09.54.03.

ORDER

I hereby **ORDER** that the Maryland Department of Health's decision denying the Appellant's March 24, 2020 application for a Home and Community-Based Options Waiver is **AFFIRMED.**

Signature Appears
on Original



December 1, 2020
Date Decision Mailed

Latonya B. Dargan
Administrative Law Judge

LBD/emh
#189241

REVIEW RIGHTS

This is the final decision of the Maryland Department of Health. A party aggrieved by this final decision may file a written petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county where any party resides or has a principal place of business. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2020). The original petition must be filed in the circuit court within thirty (30) days of the date of this decision, with a copy to David Lapp, Office of the Attorney General, Suite 302, 300 W. Preston St., Baltimore, MD 21201. Md. Rules 7-201 through 7-210.

The petition for judicial review should identify the Maryland Department of Health, which administers the Medicaid program, as the agency that made the decision for which judicial review is sought. The address of the Maryland Department of Health should be included on the petition: 201 W. Preston St., Room 511C, Baltimore, MD 21201.

A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. No fees may be charged to Medical Assistance Program recipients, applicants, or authorized representatives for transcription costs or for preparation or delivery of the record to the circuit court.

The Office of Administrative Hearings is not a party to the judicial review process.

Copies Mailed To:

[Redacted]

[Redacted]

(Emailed)
[Redacted]