

HELEN HOOD,

APPELLANT

v.

BALTIMORE COUNTY

DEPARTMENT OF SOCIAL SERVICES

* BEFORE DAVID HOFSTETTER,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* OAH No. DHMH-BCNY-10-08-03479

* * * * *

DECISION

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STATEMENT OF THE CASE

On October 31 2007, the Appellant, through her attorney-in-fact, Judy Starling, applied for Long Term Care Medical Assistance (MA) for the consideration period beginning October 1, 2007 and for the retroactive months of August and September 2007. On November 1, 2007, the Baltimore County Department of Social Services (local department), acting on behalf of the Department of Health and Mental Hygiene (DHMH), notified the Appellant that her application was denied because her resources exceeded the medically needy resource level (MNRL). On January 24, 2008, the Appellant appealed.

I held a hearing on April 22, 2008 at the local department's office in Towson, Maryland.¹ Code of Maryland Regulations (COMAR) 10.01.04.02. M. Heather L. Wirth, Esquire,

¹ A hearing scheduled for February 26, 2008 was postponed because the local department had not prepared a Summary.

represented the Appellant. Helen Fields Moore, Income Maintenance Specialist IV, represented the local department.

Procedure at the hearing is governed by the contested case provisions of the Administrative Procedure Act, the Procedures for Fair Hearing Appeals under the Maryland State MA Program, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2007); COMAR 10.01.04; COMAR 28.02.01.

ISSUE

Did the local department properly deny the Appellant's application for MA due to excess resources?

SUMMARY OF THE EVIDENCE

Exhibits

The local department submitted the following exhibit, which I admitted into evidence:

LD 1 - Summary for Appeal Hearing, with the following attachments:

- SECU account statement, period ending July 29, 2007
- SECU account history, dated September 10, 2007
- SECU account statement, period ending September 29, 2007
- SECU account history, dated November 25, 2007
- Letter from local department to Appellant, dated November 30, 2007
- Worksheet completed by local department, undated
- Notice of Ineligibility Due to Excess Resources, dated February 26, 2008

The Appellant submitted the following exhibits, which I admitted into evidence:

- App. Ex. 1 Notice of Ineligibility Due to Excess Resources, dated February 26, 2008
- App. Ex. 2 Approval for Long Term Care, dated February 27, 2008
- App. Ex. 3 Notice of Ineligibility Due to Excess Resources, dated April 10, 2008
- App. Ex. 4 Notice of Eligibility, dated February 27, 2008
- App. Ex. 5 State Retirement and Pension System Statement of Benefits, dated July 31, 2007
- App. Ex. 6 SECU account statement, dated December 29, 2007
- App. Ex. 7 Letter from the Appellant to State Retirement and Pension System, dated January 31, 2008

Testimony

The local department's representative read the local department's Summary for Appeal Hearing into the record as follows:

Period under Consideration: 10/01/07 through 3/31/08. [Appellant's representative] came in on 10/31/07, to apply for MA-LTC for [the Appellant.] The applicant entered Manor Care Dulaney on 3/26/07. Payment was requested for the retroactive periods 08/01/07 – 8/31/07, 09/01/07-09/30/07, and current 10/01/07. Countable resources for retroactive periods 08/01/07, 09/01/07 and current period, 10/01/07 included SECU Savings account #205245-S10, SECU Money Manager account #205245-S20, SECU IRA account #205245-S30 and SECU Premier Checking account #205245-S40. Total countable resources as of 08/01/07 were \$4,705.11, \$4,896.15 for 9/01/07, and \$2,953.90 for 10/01/07, which exceeded the medically needy resource standard of \$2500.00. The customer is ineligible due to excess resources. Case was denied and notices were mailed to the representative and nursing home on 11/01/07 [sic]².

Judy Starling, the Appellant's friend and attorney-in-fact, testified on behalf of the Appellant.

² The correct date for the denial notice appears to be November 30, 2008.

FINDINGS OF FACT

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

1. The Appellant applied for MA on October 31, 2007 and supplied all required information to the local department.
2. At all relevant times, the Appellant has been a resident of Manorcare Dulaney nursing home.
3. The Appellant receives income from two sources: A monthly social security benefit of \$1,106.00 and a pension from the Maryland State Retirement and Pension System (RPS) in amount of \$2,885.00.
4. At all times relevant, the monthly state pension payment was deposited by direct electronic deposit into the Appellant's checking account on the last business day of the month.
5. In most months, the last business day of the month is also the last day of the month.
6. As a general policy, RPS will only provide for direct deposit of pension checks and will not issue paper or "hard copy" checks.
7. Because the Appellant's direct deposit pension check could not be disbursed to the nursing home within hours of its receipt, the funds were present in her account on the first day of the next month, i.e., in most cases, the day after they were deposited.

8. Because the pension check funds were present in her account on the first day of each month, the local department considered them to be a “resource” for the entire month.
9. On November 30, 2008, the local department denied the Appellant’s application on the grounds of excess resources.

DISCUSSION

MA is a jointly funded state and federal program, administered by the states to provide medical insurance coverage to the indigent. 42 U.S.C. § 1396 (2003); Md. Code Ann., Health Gen. § 15-103(a)(2) (2005). In Maryland, the MA program is administered by DHMH. *See Department of Health & Mental Hygiene v. Campbell*, 364 Md. 108, 112 (2001). An applicant for MA must apply through a local department of social services. *See* COMAR 10.09.24.02B(19), F(1).

To qualify for MA, an individual must meet certain financial eligibility standards, including the resource standard. COMAR 10.09.24.08. An applicant for MA is required to report all resources to the local department, which must consider all resources in accordance with applicable regulations. COMAR 10.09.24.08C, D. It is undisputed that the medically needy resource standard for the Appellant is \$2,500.00, COMAR 10.09.24.08M, and that an applicant is ineligible for any month in which her countable resources exceed that standard. COMAR 10.09.24.08L.

In this case, the parties agree that but for the fact that the Appellant’s pension check was direct deposited into her account on the last business day of the month (which is generally the last day of the month), she would not be considered over the resource limit and would therefore

be eligible for MA for the period in question.³ This is the case because she pays to the nursing home where she resides funds equal to the amount of her pension check; by virtue of this disbursement, she would ordinarily be deemed to be within the resource limits. In this case, however, the matter is complicated by the local department's interpretation of the applicable law and policy. As discussed below, I conclude that the local department erred in its interpretation and, therefore, I shall remand the matter to the local department to re-determine the Appellant's eligibility.

To assist the local department in interpreting the applicable regulations, DHMH has issued the Medical Assistance Manual (MA Manual.) The MA Manual defines "resources" as follows:

Resources are defined as accumulated, available personal wealth for which an individual:

- has an ownership interest;
- Has the legal right, authority, or power to sell, transfer, or liquidate the resource or the individual's ownership interest in the resource; and
- May convert to cash or currency for the individual's or household's support or maintenance.

MA Manual, Release No: MR-140, p. 800-1.

The MA Manual requires a local department, in considering an applicant's resources, to use "their value as of the 1st moment of the 1st day of the period under consideration." *MA Manual*, Release No: MR-140, p. 800-4. It states that, [i]f the value of the [applicant's] total

³ The Appellant eventually persuaded RPS to send her a hard-copy check, rather than direct deposit her check into her account. Thereafter, the Appellant re-applied for MA and was found eligible.

countable resources changes after the 1st moment of a month, the change is considered as of the 1st moment of the next month and does not affect eligibility during the month of the change.” *Id.* While the local department accurately cites this section, it errs by confusing “resources” and “income.” It is clear that pension benefits are considered income (specifically, “unearned income.”) COMAR 10.09.24.07I(1)(f). Further, the MA Manual clearly provides that funds are considered to be either income or resources in a given period, but cannot be both. *MA Manual*, Release No: MR-140, p. 800-4b. The MA Manual provides an explanation of whether money is to be considered income or resources, stating: “If money is received as income during the current period under consideration, it is considered as income.” Because the pension checks received by the Appellant were received during the consideration period at issue, they should be considered as income, not as resources.⁴

Finally, I conclude that even if the local department is correct in its view that the pension payments must be considered as resources, it is, on the facts of this case, incorrect to consider the Appellant to be over the resource limit as a result. Such a conclusion would lead to bizarre results: Each month the direct-deposited pension check would be in her account for a mere day or two before being disbursed, yet the Appellant could never become eligible for MA simply because the check was deposited on the last day of the month rather than, say, the fifth or tenth

⁴ In the same section of the MA Manual there is also the following statement: “Income that accumulates and is retained beyond the month of receipt is considered resource in all subsequent months, unless it is counted as income for the same period under consideration.” *MA Manual*, Release No: MR-140, p. 800-4a-b. While this provision seems at odds with the provision quoted above that money received as income during a consideration period is considered as income for the entire consideration period, it does not change the result in this case. I interpret the phrase “beyond the month of receipt” to refer to a 30-day period, not a calendar month. To conclude otherwise would be to treat differently income received at different times of a month. I can see no basis for such an arbitrary policy and therefore conclude that this result was not intended by the drafters of the MA Manual. Because the parties agree that the Appellant’s pension payments were disbursed to her nursing facility within 30 days of receipt, it is clear that, even under this provision, they should be considered income, not resources.

day. Indeed, the local department's representative at the hearing forthrightly agreed that the result was not sensible and that absent the anomaly, the Appellant would likely be eligible. It is axiomatic that the statutes (and, by extension, regulations and official policy statements) should not be interpreted so as to render absurd results. *Getty v. Carroll County Bd. of Elections*, 399 Md. 710, 729 (2007); *Price v. State*, 378 Md. 378, 387 (2003); *Montgomery County Comm'rs v. Supervisors of Elections of Montgomery County*, 192 Md. 196, 208 (1948); *Comptroller of Treasury v. John C. Louis Co.*, 285 Md. 527, 539 (1979). Basing the Appellant's eligibility on the fortuity of the date when the state deposits her pension check in her account would be just such an absurd result, and should not be permitted.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the local department incorrectly determined that the Appellant was ineligible for Long Term Care Medical Assistance for the consideration period beginning October 1, 2007 and for the retroactive months of August and September 2007. COMAR 10.09.24.08; *MA Manual*, Release No: MR-140, pp. 800-1-800-4b.


ORDER

IT IS THEREFORE ORDERED that this matter be, and hereby is, **REMANDED** to the Baltimore County Department of Social Services with instructions that it re-determine the Appellant's eligibility for Medical Assistance based on her application of October 31, 2007, in accordance with this Decision, and it is further

ORDERED, that after reconsidering the Appellant's application of October 31, 2007, in accordance with this Decision, the Baltimore County Department of Social Services will issue a

new determination on the Appellant's eligibility for Medical Assistance based on her application of October 31, 2007, within thirty (30) days of the date of the decision in this case.

June 13, 2008
Date Decision Mailed



David Hofstetter
Administrative Law Judge

DH
#97769

REVIEW RIGHTS

This decision is final and binding on the local department. If the Appellant is not satisfied with this decision, the Appellant may appeal it to the Board of Review of the Department of Health and Mental Hygiene within thirty days of the date of this decision. To do so, the Appellant must write to the Secretary of the Board of Review, Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201. COMAR 10.01.04.08B(3) and COMAR 10.01.05. The Office of Administrative Hearings is not a party to any review process.

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