

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

[REDACTED]  
Lapeer County DHS

**ADMINISTRATIVE LAW JUDGE:** Vicki L. Armstrong

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a Rehearing. The original hearing was held on February 16, 2011, by Administrative Law [REDACTED]. The decision dated February 22, 2011, upheld the department. On March 24, 2011, Claimant filed a rehearing request which was granted on September 13, 2011. After due notice, a *de novo* hearing was held on October 19, 2011, by telephone. Claimant and Claimant's representative personally appeared and provided testimony.

**ISSUE**

Whether the department properly denied Claimant's Medical Assistance (MA) and Retro-MA application based on excess assets?

**FINDINGS OF FACT**

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

1. Claimant applied for MA and Retro-MA benefits on March 27, 2009. (Claimant Exhibits 5-23).
2. On September 20, 2010, Claimant submitted a memorandum to the department from [REDACTED] which stated that Claimant and the Realty entered into a listing agreement for the property at [REDACTED] on August 11, 2008 through August 11, 2009. Claimant also submitted a copy of the [REDACTED], as well as Listing #154-09-0015, showing the property was listed at [REDACTED]. (Claimant Exhibits 38-40).
3. On May 30, 2009, the department denied Claimant's MA and Retro-MA application for excess assets. (Claimant Exhibit 27).

4. On February 16, 2011, a telephone hearing was conducted. Claimant and Claimant's representative appeared and provided testimony.
5. On February 22, 2011, ALJ Sundquist issued a decision upholding the department. (Claimant Exhibits 27-29; [REDACTED]; Case [REDACTED])
6. On March 24, 2011, Claimant requested a Rehearing.
7. On September 13, 2011, the Rehearing was granted and a *de novo* hearing was conducted. While the department provided a representative, the department representative had no personal knowledge of the case and was unable to present any of the requisite documents.

### **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

In this case, Claimant applied for MA-P and retro-MA. The department denied the application for excess assets, in that the department determined that Claimant's second, unoccupied real estate should be counted as an asset putting Claimant over the asset limit. Administrative Law Judge Sundquist upheld the department's denial finding that the real estate agent did not indicate whether his appraisal was at fair market value.

According to policy in effect at the time of the filing of the application, the department is not to count the asset value when it has no current market value as shown by an actual sale attempt at or below fair market value in the owner's geographic area which results in no reasonable offer to purchase. The asset becomes salable when a reasonable offer is received. Such assets must have been up for sale at least 30 days. For applicants, the sale attempt must have occurred within 3 calendar months prior to the month of application. (BEM 400 as of 1/1/2009).

The initial hearing in this case was held on February 16, 2011, wherein Claimant presented copies of the [REDACTED] Property Listing and Memorandum from the [REDACTED] showing the property at issue was properly listed from August 8, 2008 through August 9, 2009, at [REDACTED]. During the hearing, Claimant testified that no offers were received on the property and the department did not contest the appraisal of the property as being at fair market value.

Because [REDACTED] raised the issue of whether the property was properly appraised at fair market value for the first time in his opinion, it was not properly before him or apparently at issue according to the original hearing, and that issue is not before this Administrative Law Judge. Here, Claimant placed the property on the market in August 2008, more than 3 calendar months prior to the March 2009 MA and Retro-MA

application. The actual sale attempt did not result in a reasonable offer to purchase. Therefore, according to departmental policy in effect at the time, the department improperly counted the property as an asset.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department failed to properly process Claimant's MA-P and retro – MA application.

Accordingly, the department's determination is REVERSED. The department SHALL process Claimant's original MA-P and retro-MA application dated March 30, 2009 in accord with policy and not count the property as an asset.

It is SO ORDERED.

/S/  
Vicki L. Armstrong  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: 10/25/11

Date Mailed: 10/25/11

**NOTICE:** Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

VLA/ds

