

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

