

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-16728
Issue No.: 2021
Case No.: [REDACTED]
Hearing Date: May 16, 2012
County: Kalamazoo

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on May 16, 2012, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Claimant's daughter/AHR) and [REDACTED]. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist).

ISSUE

Did the Department properly deny Claimant's application for Medical Assistance (MA) or "Medicaid"-Long Term Care (LTC) due to excess assets?

FINDINGS OF FACT

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

1. At all times, Claimant owns ½ (one half) of a home (duplex) located in [REDACTED], Michigan and Claimant's relative owns the other half of the duplex. Although the two buildings are adjacent, the structures function independently and have separate mailing addresses.
2. On September 14, 2011, the Department received Claimant's Medicaid LTC application. On pages 2 and 7 of the application, Claimant indicated that the amount or value of her home, life estate or life lease was [REDACTED]. She also indicated on page 3 that she paid [REDACTED] per year in property taxes.

3. At the time of application, Claimant resided in a nursing home facility.
4. On September 14, 2011, the Department also received Claimant's application for Retroactive Medicaid seeking coverage for May, June and July of 2011.
5. On September 19, 2011, the Department mailed Claimant a verification checklist which was due by September 29, 2011.
6. In response to the verification checklist, Claimant mailed the Department the 2011 summer tax bill from Ross Township which noted that the duplex had a State Equalized Value (SEV) of [REDACTED]
7. The Department determined that Claimant's real property asset had a fair market value of [REDACTED] based on the SEV.
8. On October 28, 2011, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied Claimant's application due to excess assets.
9. On November 4, 2011, Claimant requested a hearing to dispute the Department's determination of excess assets.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The MA program is also referred to as "Medicaid." BEM 105. The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. BEM 105. The Medicaid program is comprised of several sub-programs or categories. One category is Family Independence Program (FIP) (or "cash assistance") recipients. BEM 105. Another category is Social Security Income (SSI) recipients. BEM 105. There are several other categories for persons not receiving FIP or SSI. BEM 105. However, the eligibility factors for these categories are based on (or related to) the eligibility factors in either the FIP or SSI program. BEM 105. Therefore, these categories are referred to as either FIP-related or SSI-related. BEM 105.

To receive Medicaid under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. BAM 105. Families with dependent children, caretaker relatives of dependent children, persons

under age 21 and pregnant, or recently pregnant women, receive Medicaid under FIP-related categories. BAM 105. For MA only, a client and the client's community spouse have the right to request a hearing on an initial asset assessment only if an application has actually been filed for the client. BAM 105. Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. BEM 105.

Effective October 1, 2011, the Department considers assets when determining eligibility for Medicaid categories. BEM 400. "Assets" are defined as cash, including any other personal property and real property. BEM 400. "Real property" is defined as land and objects affixed to the land such as buildings, trees and fences. BEM 400.

Countable assets cannot exceed the applicable asset limit but not all assets are counted. BEM 400. Some assets are counted for one program, but not for another program. BEM 400. Some programs do not count assets. BEM 400.

In order to determine whether, and how much of, an asset is countable, the Department must consider both its availability and whether it is excluded. BEM 400. In other words, an asset is countable if it meets the availability tests and is not excluded. BEM 400. Only certain types of assets are considered by the following Medicaid programs: LIF, G2U, G2C, and AMP. BEM 400. All types of assets are considered for SSI-related MA categories. BEM 400.

The Department determines asset eligibility prospectively using the asset group's assets from the benefit month. BEM 400. Asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400.

A homestead is where a person lives (unless Absent from Homestead under BEM 400) that he or she owns, is buying or holds through a life estate or life lease. BEM 400. It includes the home, all adjoining land and any other buildings on the land. BEM 400. Adjoining land means land which is not completely separated from the home by land owned by someone else. BEM 400. Adjoining land may be separated by rivers, easements and public rights-of-way (example: utility lines and roads). BEM 400.

For SSI-Related Medicaid, the Department will determine the equity value of the homestead. Policy provides that Medicaid will not pay the client's cost for: (1) home health services; (2) home and community-based services (MIChoice Waiver); (3) LTC services; (4) home help; (5) when the equity in the client's homestead exceeds: [REDACTED] starting in January 2011 and [REDACTED] starting January 1, 2012. The Department will exclude the asset group's homestead. BEM 400.

For SSI-Related Medicaid, the Department will exclude a homestead that an owner formerly lived in if any of the following are true: (1) the owner intends to return to the homestead; (2) the owner is in an LTC facility, a hospital, an adult foster care (AFC)

home or a home for the aged; (3) a co-owner of the homestead uses the property as his home. BEM 400.

The Department will exclude a homestead even if the owner never lived there provided: (1) the owner is in an institution and (2) the owner's spouse or relative (see below) lives there. BEM 400. "Relative" for this purpose means a person dependent in any way (financial, medical, etc.) on the owner and related to the owner as any of the following: (1) child, stepchild or grandchild; (2) parent, stepparent or grandparent; (3) aunt, uncle, niece or nephew; (4) cousin; (5) in-law; (6) brother, sister, stepbrother, stepsister, half-brother or half-sister. BEM 400.

In the instant matter, Claimant, through her AHR, challenges the Department's decision to deny the Medicaid applications based on excess assets. Claimant alleges that the Department did not properly calculate the fair market value of her share of the duplex. The Department found that Claimant's homestead exceeded the asset limit of [REDACTED] set forth in BEM 400. In support of this contention, Claimant provided a November 21, 2011 letter from the [REDACTED] who indicated that the [REDACTED] SEV was based on both buildings. The [REDACTED] Assessor then added, ". . . it is my opinion that the property value will be below 500,000. The 2012 assessed value will reflect this." Claimant also provided an appraisal report of her portion of the property performed by [REDACTED] dated November 22, 2011. This appraisal concluded the property value at [REDACTED]. Claimant also offered two property value estimates by two local realtors. One realtor opined that Claimant's share of the property would be listed in the range of [REDACTED] to [REDACTED]. The second realtor provided that the most likely selling price would be in the range of [REDACTED]. Finally, Claimant included a 2012 Winter Tax Bill for her share of the property which provided an SEV of [REDACTED].

The property at issue in the instant matter is a "homestead" as defined by BEM 400. The parcel owned by Claimant ([REDACTED]) is completely separate from the adjacent property ([REDACTED]), which is owned by someone else. Claimant provided a deed which established that the two properties are separate and distinct. No explanation was provided to explain why [REDACTED] initially assessed the two properties together in the summer 2011 tax bill. Later, [REDACTED] corrected the error and reassessed Claimant's property separately in the 2012 winter tax bill. Moreover, the two properties have separate mailing addresses, have separate deeds and, as of 2012, receive separate tax bills.

There are two reasons why the Department should reprocess Claimant's Medicaid application. The first is because the Department should use Claimant's 2012 winter tax bill from [REDACTED] rather than the 2011 summer tax bill from both properties. The 2011 winter tax bill more accurately reflects Claimant's homestead as the evidence shows she does not own the property located at [REDACTED]. The property at [REDACTED] is owned by someone else. Secondly, the Department should exclude Claimant's homestead under BEM 400. Here, Claimant formerly lived on the property and, at the time of application, resided in a nursing home.

Accordingly, based on the material, substantial and competent evidence, this Administrative Law Judge finds that the Department did not properly process Claimant's September 14, 2011 application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law finds that the Department did not act properly when it denied Claimant's September 14, 2011 Medicaid application based on excess assets.

Accordingly, the Department's MA decision is REVERSED for the reasons stated above.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reprocess Claimant's September 14, 2011 Medicaid application.
2. Redetermine Claimant's homestead using verifications that accurately reflects the property owned by Claimant.
3. Recalculate the value of Claimant's real property assets under BEM 400.
4. After the Department obtains all necessary and proper verifications, and reprocesses the application, the Department shall reissue a new Notice of Case Action (DHS-1605).

IT IS SO ORDERED.

/s/ _____
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 5/31/12

Date Mailed: 5/31/12

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CAP/ds

