

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
(517) 335-2484; Fax (517) 373-4147**

IN THE MATTER OF:

Docket No. 2014-27084 EST

Estate of [REDACTED],

Petitioner

PROPOSAL FOR DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, MCL 400.112g, and 42 CFR 431.200, upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on [REDACTED]. Attorney [REDACTED] appeared on behalf of the Estate of [REDACTED] (Petitioner). [REDACTED], Assistant Attorney General, appeared on behalf of the Respondent, Department of Community Health (Respondent or Department).

At the commencement of the hearing, the attorneys agreed that they would rely on their written briefs submitted prior to the hearing, as well as oral arguments made at the hearing, and that no testimony would be required.

Petitioner's brief was accepted into the record along with attached Exhibits 1-8. Petitioner's Exhibit 9 is the original request for hearing. The Department's brief was accepted into the record along with attached Exhibits A-E.

ISSUE

Did the Respondent properly deny Petitioner's request for a hardship exemption under the Michigan Estate Recovery Program?

FINDINGS OF FACT

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

1. The Department of Community Health (Department or Respondent) brought a claim for estate recovery from the Estate of [REDACTED] (Petitioner) pursuant to the mandates of 42 USC 1396p, MCL 400.112g, the Michigan State Medicaid Plan (MSMP) as amended (SPA) and DCH policy (Bridges Administrative Manual [BAM]) for long-term care provided to [REDACTED] and paid for by Medicaid. (Respondent's Brief, p 2)

Estate of [REDACTED]
Docket No. 2014-27084 EST
Proposal for Decision

2. On [REDACTED], [REDACTED], co-personal representatives of the estate, (the applicants), submitted a joint Application for Hardship Waiver. (Exhibit A)
3. As part of the application, the applicants were asked, "As of the decedent's date of death, was the value of the estate property 50% or less than that of the average selling price of homes in the County where the property is located?" The applicants answered "No." (Exhibit A, p 3)
4. As part of the application, the applicants were also asked whether estate recovery would make them eligible for Medicaid and they answered "No." The applicants also answered "No" to the question in the application of whether waiving estate recovery would allow them to discontinue enrollment in Medicaid. The applicants also failed to attach a copy of their most recent federal income tax returns and, if applicable, current proof of Medicaid enrollment, as requested in the application. (Exhibit A, p 4)
5. On [REDACTED], the Department denied the request for a hardship exemption because it determined that the decedent's home did not meet the definition of a home of modest value because its value was greater than 50% of the average price of homes in the county. (Exhibits B, C, D; Testimony; BAM 120, pp 8-10)
6. The applicants' Request for Hearing was received by the Michigan Administrative Hearing System on [REDACTED]. (Exhibit 9).

CONCLUSIONS OF LAW

The Estate Recovery Program is operated according to policies developed by the Department based on the Michigan State Medicaid Plan (MSMP) as amended (SPA). MCL 400.112g requires the Department to establish and implement an estate recovery program subject to an amendment to the MSMP and operated according to the provisions of the SPA as accepted by CMS.

MCL 400.112g provides, in pertinent part:

* * *

(3) The department of community health shall seek appropriate changes to the Michigan medicaid state plan and shall apply for any necessary waivers and approvals from the federal centers for medicare and medicaid services to implement the Michigan medicaid estate recovery program. The department of community health shall seek approval from the federal centers for medicare and medicaid regarding all of the following:

(a) Which medical services are subject to estate recovery under section 1917(b)(1)(B)(i) and (ii) of title XIX.

Estate of [REDACTED]
Docket No. 2014-27084 EST
Proposal for Decision

(b) Which recipients of medical assistance are subject to estate recovery under section 1917(a) and (b) of title XIX.

(c) Under what circumstances the program shall pursue recovery from the estates of spouses of recipients of medical assistance who are subject to estate recovery under section 1917(b)(2) of title XIX.

(d) What actions may be taken to obtain funds from the estates of recipients subject to recovery under section 1917 of title XIX, including notice and hearing procedures that may be pursued to contest actions taken under the Michigan medicaid estate recovery program.

(e) Under what circumstances the estates of medical assistance recipients will be exempt from the Michigan medicaid estate recovery program because of a hardship. At the time an individual enrolls in medicaid for long-term care services, the department of community health shall provide to the individual written materials explaining the process for applying for a waiver from estate recovery due to hardship. The department of community health shall develop a definition of hardship according to section 1917(b)(3) of title XIX that includes, but is not limited to, the following:

(i) An exemption for the portion of the value of the medical assistance recipient's homestead that is equal to or less than 50% of the average price of a home in the county in which the medicaid recipient's homestead is located as of the date of the medical assistance recipient's death.

(ii) An exemption for the portion of an estate that is the primary income-producing asset of survivors, including, but not limited to, a family farm or business.

(iii) A rebuttable presumption that no hardship exists if the hardship resulted from estate planning methods under which assets were diverted in order to avoid estate recovery.

(f) The circumstances under which the department of community health may review requests for exemptions and provide exemptions from the Michigan medicaid estate recovery program for cases that do not meet the definition of hardship developed by the department of community health.

(g) Implementing the provisions of section 1396p(b)(3) of title XIX to ensure that the heirs of persons subject to the Michigan medicaid

Estate of [REDACTED]
Docket No. 2014-27084 EST
Proposal for Decision

estate recovery program will not be unreasonably harmed by the provisions of this program. [Emphasis added].

In order to follow the dictates of MCL 400.112g, the Respondent developed amendments to the State Plan under Title XIX of the Social Security Act and submitted the proposal to the Federal Centers for Medicare and Medicaid, Department of Health and Human Services, for approval. On May 23, 2011, the amendments to Michigan's State Plan were approved, with an effective date of July 1, 2010. Further amendments were approved September 19, 2012, with an effective date of April 1, 2012.

Paragraph 4 of the approved amended State Plan (SPA) defines undue hardship as follows:

An undue hardship may exist when (1) the estate subject to recovery is the primary income-producing asset of the survivors (where such income is limited), including, but not limited to, a family farm or business; (2) the estate subject to recovery is a home of modest value or (3) the State's recovery of a decedent's estate would cause a survivor to become or remain eligible for Medicaid.

* * *

Home of modest value is defined as a home valued at fifty percent (50%) or less of the average price of a home in the county where the homestead is located, as of the date of the beneficiary's death.

For individuals who apply for but do not meet the definition of undue hardship as found in MCL §400.112g and provided above, the State will consider granting an exemption when a survivor who was residing in the deceased's beneficiary's home continuously for at least two years immediately before the beneficiary's date of death, provided care that kept the deceased beneficiary out of an institution, even if the deceased beneficiary never entered an institution. This exemption will only be granted in circumstances where non-institutional long-term care services approved under the State Plan were provided and only after the means test has been satisfied.

The State is following its own definition of undue hardship in accordance with MCL §400.112g(3)(e). When considering whether to grant an undue hardship waiver, a means test will be applied. *West Virginia v. Thompson*, 475 F.3d 204. An Applicant will satisfy the means test only if both of the following are true:

- total household income of the applicant is less than 200 percent of the poverty level for a household of the same size; and

Estate of [REDACTED]
Docket No. 2014-27084 EST
Proposal for Decision

- total household resources of the applicant do not exceed \$10,000.

Undue hardship waivers are temporary. Undue hardship waivers expire when the conditions which qualified an estate, or a portion of an estate, for a waiver no longer exist.

*Amended State Plan Under Title XIX of the Social Security Act
Attachment 4, 17-A, p. 2
Approved September 19, 2012*

Paragraph 7 of the approved amended State Plan (SPA) outlines the collection procedures the State will use under the Estate Recovery Program. Paragraph 7 states, in pertinent part:

The State uses the following collection procedures:

* * *

The NOI [Notice of Intent] also indicates that the State may waive recovery in the event that recovery would result in an undue hardship. The NOI provides the State's definition of an undue hardship along with a contact phone number and address to request an undue hardship application. The NOI also advises that an undue hardship application may be downloaded from the estate recovery website and gives the url. Lastly, the NOI states that adverse decisions may be appealed under the Administrative Procedures Act, (MCL 24.201-24.328) within 60 days of receiving notice of the State's final decision.

Upon confirmation that a case does not meet any statutory exemptions or hardship conditions and that probate has been opened, the State files a claim against the estate and pursues recovery. The State's estate recovery claim is administered through the State Probate Court system and all claims are subject to review by the Probate Court.

The Probate Court's allowance or denial of the State's claim is subject to the appellate review available to all other Probate Court decisions.

The State will petition a court pursuant to estates and protected individuals code, for distribution of estate assets upon determination that the personal representative has failed to distribute the proceeds of the estate in a timely manner. [MCL 700.3415; 3807(1); 3951; 3952; 3953, emphasis added].

* * *

Amended State Plan Under Title XIX of the Social Security Act

The Department's policy to implement the Estate Recovery Program is published in BAM (BAM 120, pp 8-10):

Undue Hardship

Recovery may be waived if a person inheriting property from the estate can prove that recovery would result in an undue hardship. An application for an undue hardship must be requested by the applicant and returned with proper documentation in order for a hardship waiver to be considered. In order to qualify for a hardship exemption, an applicant must file the application with the department not later than 60 days from the date the department sends the Notice of Intent to the personal representative or estate contact. An undue hardship exemption is granted to the applicant only and not the estate generally.

Undue hardship waivers are temporary. Submitted applications will be reviewed by the department or its designee, and the department shall make a written determination on such application.

Undue hardship waivers involve a two prong inquiry. The first prong requires the applicant to prove at least one of the three following categories:

An undue hardship may exist when one or more of the following are true:

- The estate subject to recovery is the sole-income-producing asset of the survivors (where such income is limited), such as a family farm or business.
- The estate subject to recovery is a home of modest value, see definition in this item.
- The state's recovery of decedent's estate would cause a surviving heir to become or remain eligible for Medicaid.

Once the first prong is satisfied, the second prong requires the applicant to also satisfy the means test under BAM 120:

When considering whether to grant an undue hardship, the department shall apply a means test to all applicants to ensure that waivers are not granted in a way that is contrary to the intent of the estate recovery program under federal law.

An applicant for an undue hardship waiver will satisfy the means test only if both of the following are true:

Estate of [REDACTED]
Docket No. 2014-27084 EST
Proposal for Decision

- Total household income of the applicant is less than 200 percent of the poverty level for a household of the same size as set in Reference Table Manual 246.
- Total household resources of the applicant do not exceed \$10,000.

BAM 120 also includes the following definitions:

Definitions:

Survivor: An heir who does not predecease the deceased beneficiary under the provisions of MCL 700.2104 or according to the terms of the decedent's will.

Home of Modest Value: A home that is valued at 50 percent or less of the average price of homes in the county where the home is located as of the date of the Medicaid beneficiary's death.

Value of Medicaid recipient's home: The State Equalized Value (SEV) of a Medicaid recipient's home from the year the Medicaid recipient died is used to determine whether that home is a home of modest value. The SEV will be double to find the value of the home.

Average Price: The average price of homes in the county shall be determined from the Equalized Valuation Totals Summary report (L-4023) published by the State Tax Commission. The average price shall be calculated by dividing the total True Cash Value of the Real Property in the county by the total Number of Parcels.

Resources: All income, as defined in BEM 500 series, and assets, as defined in BEM 400 an applicant has.

* * * *

Appeals

The Hardship Waiver applicant has the right to contest the department decision of whether an undue hardship exists. The applicant may request a hearing within 60 days of the notice of case action on the application. The request for a hearing must be in writing and will be conducted under the provisions of BAM 600.

*BAM 120, pp 8-10, May 1, 2012
and SPA, emphasis added*

With regard to jurisdiction, the SPA clearly states in paragraph 7, which deals with hardship exemptions, that adverse decisions may be appealed under the Administrative Procedures Act, (MCL 24.201-24.328) within 60 days of receiving notice of the State's final decision. The SPA goes on to provide that once it is determined that a case does

Estate of [REDACTED]
Docket No. 2014-27084 EST
Proposal for Decision

not meet any statutory exemptions for hardship, the State's estate recovery claim is administered through the State Probate Court system and all claims are subject to review by the Probate Court. As such, this tribunal only has jurisdiction to hear issues regarding hardship exemptions – it does not have jurisdiction to decide Petitioner's claim that the decedent did not receive notice of estate recovery when she enrolled in Medicaid. Petitioners can raise that issue in the Probate Court, should the need arise.

Here, the Department filed a claim for estate recovery against Petitioner's estate in the amount of \$ [REDACTED]. The date of death for the decedent was [REDACTED] and on [REDACTED], [REDACTED], co-personal representatives of the estate, submitted a joint Application for Hardship Waiver. The Department denied the request for a hardship waiver on [REDACTED]. (Respondent's Brief, pp 1-2)

The Department denied the Application for Hardship Waiver because the value of the decedent's home was too high to meet the definition of a home of modest value. According to the estate Inventory, the value of decedent's home was \$ [REDACTED]. The average price of homes in Berrien County on the date of death was \$ [REDACTED] and 50% of that total was approximately \$ [REDACTED]. Since the definition of a home of modest value requires that the home be "fifty percent (50%) or less of the average price of homes in the county where the homestead is located, as of the date of the beneficiary's death", the Department determined that the decedent's home did not qualify for a hardship exemption under the definition as a home of modest value. (Respondent's Brief, pp 2-6).

In addition, the Department determined that the applicants did not meet the first category of hardship under BAM 120 and the SPA because the property at issue is not income producing property. And, the Department determined that the applicants did not meet the third category of hardship under BAM 120 and the SPA because they did not claim that estate recovery would cause them to become eligible for Medicaid or that failure to make an estate recovery would allow them to dis-enroll from Medicaid. Finally, the Department determined that even if the applicants had met one of the categories for hardship, they did not include any information for the Department to conduct a means test. (Respondent's Brief, pp 2-6).

Petitioner's representative argues that the plain meaning of MCL 400.112g(3)(e)(i) is that there is an exemption of up to 50% of the average price of a home in the county in which the Medicaid recipient's homestead is located, not that there is no exemption unless the home is valued at 50% or less of the average price of a home in the county where the homestead is located. In other words, Petitioner's representative argues that under MCL 400.112g(3)(e)(i) acts as a set off to estate recovery and that everyone gets an exemption of up to 50% of the average price of a home in the county, regardless of the value of the decedent's estate. (Petitioner's Brief, pp 8-9)

However, as Respondent correctly points out, MCL 400.112g(3) is not the Estate Recovery Act in Michigan, it is simply the part of the statute that enabled the development of estate recovery rules in this state. Section 3 of MCL 400.112g begins:

Estate of [REDACTED]
Docket No. 2014-27084 EST
Proposal for Decision

The department of community health shall seek appropriate changes to the Michigan medicaid state plan and shall apply for any necessary waivers and approvals from the federal centers for medicare and medicaid services to implement the Michigan medicaid estate recovery program. (Emphasis added).

As indicated above, in order to follow the dictates of MCL 400.112g, the Respondent developed amendments to the State Plan and submitted the proposal to the Federal Centers for Medicare and Medicaid, Department of Health and Human Services, for approval. The State Plan was approved and paragraph 4 of the approved amended State Plan (SPA) then defined undue hardship as follows:

An undue hardship may exist when (1) the estate subject to recovery is the primary income-producing asset of the survivors (where such income is limited), including, but not limited to, a family farm or business; (2) the estate subject to recovery is a home of modest value or (3) the State's recovery of a decedent's estate would cause a survivor to become or remain eligible for Medicaid.

And the SPA defined home of modest value as:

Home of modest value is defined as a home valued at fifty percent (50%) or less of the average price of a home in the county where the homestead is located, as of the date of the beneficiary's death.

The SPA also required Michigan to adopt a means test, which was incorporated into BAM 120. As such, the proper policy for estate recovery in Michigan is contained in the SPA and BAM 120, not MCL 400.112g(3), which acted only as an enabling statute. For those reasons, Petitioner's argument must fail.

Based on the evidence presented, Petitioner has failed to prove, by a preponderance of evidence, that the Department's denial of the undue hardship exemption was improper. As indicated above, BAM 120 indicates that the average price of homes in the county will be determined by using the Equalized Valuation Totals Summary report (L-4023) published by the State Tax Commission. Using that report, the average price shall be calculated by dividing the total True Cash Value of the Real Property in the county by the total Number of Parcels. Using that method, the average price of homes in Berrien County on the date of death was \$ [REDACTED] and 50% of that amount is \$ [REDACTED]. Here, the value of decedent's home is \$ [REDACTED], which is more than 50% of the average price of homes in the county. As such, the decedent's home is not a home of modest value and the applicants are not eligible for a hardship waiver.

In addition, the applicants do not meet the first category of hardship under BAM 120 and the SPA because the property at issue is not income producing property. And, the applicants do not meet the third category of hardship under BAM 120 and the SPA

Estate of [REDACTED]
Docket No. 2014-27084 EST
Proposal for Decision

because they do not claim that estate recovery would cause them to become eligible for Medicaid or to dis-enroll from Medicaid if estate recovery was waived. Finally, even if the applicants had met one of the categories for hardship, they did not include any information for the Department to conduct a means test. As such, the applicants' application for an undue hardship exemption was properly denied.

PROPOSED DECISION

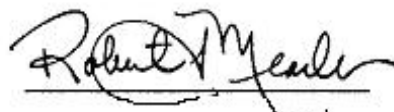
Based on the above, the undersigned administrative law judge recommends that the Director find that:

- This tribunal lacks jurisdiction to decide whether notice of estate recovery was proper.
- Petitioner's home is not a home of modest value because its value was greater than 50% of the average price of homes in Midland County; and
- The Department's decision to deny an undue hardship exemption must be UPHELD.

EXCEPTIONS

Any exceptions to this Proposal for Decision must be filed with the Michigan Administrative Hearing Service, Attention: [REDACTED], 611 West Ottawa Street, P.O. Box 30695, Lansing, Michigan 48909-8195, within 10 days after it is issued. The opposing party may file a reply within 10 days after receiving the exceptions.

After the exceptions period, this Proposal for Decision and any exceptions will be reviewed and a Final Decision will be entered by the Director.



Robert J. Meade
Administrative Law Judge

Date Signed: April 14, 2014

Date Mailed: April 14, 2014

[REDACTED]

**Estate of [REDACTED]
Docket No. 2014-27084 EST
Proposal for Decision**

cc: Estate of [REDACTED]
c/o [REDACTED]
[REDACTED]