

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-001810
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: April 30, 2015
County: Grand Traverse

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on April 30, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], Attorney, [REDACTED] daughter and Power of Attorney, [REDACTED], son in law. Participants on behalf of the Department of Health and Human Services (Department) included [REDACTED], Assistant Attorney General (AAG), [REDACTED], Family Independence Manager (FIM), and [REDACTED], Eligibility Specialist (ES).

ISSUE

Did the Department properly deny Claimant's Medical Assistance (MA) application based on assets in excess of program limits?

FINDINGS OF FACT

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

1. On December 19, 2014, Claimant applied for Medicaid.
2. Claimant's assets include several properties, three of which are not the principal residence and are located in [REDACTED].
3. Two of the properties in [REDACTED], TR 9 and TR 45, had been up for sale for at least 90 days and were current active listings.
4. On January 22, 2015, a Health Care Coverage Determination Notice was issued to Claimant stating the MA application was denied based on assets in excess of

program limits, noting that the TR 9 and TR 45 were considered countable assets.

5. On January 29, 2015, Claimant filed a request for hearing contesting the Department's determination.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

NON-SALABLE ASSETS

SSI-Related MA Non-Salable Assets

SSI-Related MA Only

Give the asset a \$0 countable value when it has no current market value as shown by one of the following:

- Two knowledgeable appropriate sources (example: realtor, banker, stockbroker) in the owner's geographic area state that the asset is **not** salable due to a specific condition (for example, the property is contaminated with heavy metals). This applies to any assets listed under:
 - Investments.
 - Vehicles.
 - Livestock.
 - Burial Space Defined.

- Employment and Training Assets.
- Homes and Real Property (see below).
- In addition, for homes, life leases, land contracts, mortgages, and any other real property, an actual sale attempt at or below fair market value in the owner's geographic area results in no reasonable offer to purchase. The asset becomes salable when a reasonable offer is received. Count an asset that no longer meets these conditions.

For applicants, an active attempt to sell must have started at least 90 days prior to application and must continue until the property is sold. For recipients, the asset must have been up for sale at least 30 days prior to redetermination and must continue until the property is sold. An active attempt to sell means the seller has a set price for fair market value, is actively advertising the sale in publications such as local newspaper, and is currently listed with a licensed realtor.

BEM 400, (January 1, 2015), p. 13.

In this case, the contested issue was whether the two properties, TR 9 and TR 45, should be given a \$█ countable value for determining Claimant's Medicaid eligibility.

The AAG asserted that the above cited BEM 400 policy was poorly drafted and that the policy actually requires the criteria for both bullet points be met, not just one of the two bullet points. While the drafting/formatting of the policy could be improved, the AAG's argument that the criteria of both bullet points must be met is not persuasive. As written, the policy states an asset is to be given a \$█ countable value when it has no current market value as shown by one of the following. By plain language, only one of the following bullet points needs to be met. Regarding the sub-bullet point "Homes and Real Property (see below)", the "see below" does not appear to relate to the second bullet point. Rather, just before this listing of sub-bullet points, the policy states "this applies to any assets listed under." Therefore, the "see below" appears to relate to the later BEM 400 policy section titled "Homes and Real Property", which starts on page 29 of 67. Further, the first bullet point applies to multiple types of assets that may be not saleable due to a specific condition, not just real property. The second bullet point is specific to real property and addresses how attempts to sell real property should be considered. Therefore, Claimant only had to meet the criteria of the second bullet point for TR 9 and TR 45 to be given a \$█ countable value in determining his eligibility for Medicaid. Accordingly, it is not necessary to have verification from two knowledgeable appropriate sources in the owner's geographic area regarding these properties.

Under the second bullet point, the properties would qualify if there has been an actual sale attempt at or below fair market value in the owner's geographic area resulting in no reasonable offer to purchase that started at least 90 days prior to application and must continue until the property is sold. An October 5, 2014, letter from the realtor's office documented that TR 9 and TR 45 are currently listed for sale and have been listed for sale for over 90 days.

The AAG asserted that the listing prices were above the fair market value; therefore, this has not been a qualifying active attempt to sell. The listing prices for the properties were noted to be higher than the values from the County tax records and the some of the actual sales prices of the comparable properties listed in the realtor's letter.

BEM 400, pp. 29-30, sets out the ways the Department can determine the fair market value of real property. Both a statement from a real estate agent and County records are included as acceptable ways to determine the fair market value of real property. However, there is no requirement that more than one of the listed methods be utilized nor is there any indication that any of these methods is preferred over another or considered more accurate.

Claimant's attorney noted that the first page of the County tax records states that the valuation is an estimate of the market value. (Department Exhibit A, pg. 11) Further, it was noted that the letter from the realtor provides a listing of comparable properties to substantiate that TR 9 and TR 45 are priced at fair market value. (Department Exhibit A, pp. 18-19)

Overall, the evidence establishes the Claimant provided an acceptable verification, the statement from the realtor, verifying that TR9 and TR 45 are currently listed for sale, and have been listed for sale for over 90 days, at a price that is within fair market value. While the County tax records indicates a lower fair market value, these records even note that the valuation is only an estimate. Further, County records are only one of the several acceptable methods for determining fair market value and the policy does not indicate that County records are a preferred or more reliable method. A statement from a realtor is also an acceptable method for determining fair market value. The letter from the realtor shows that the listing prices, on a per acre basis, are toward the low end of the range of the listing prices of the comparable properties, and within the range of the actual sales prices of the comparable properties. Based on the detailed information in the realtor's statement, TR 9 and TR 45 are listed at fair market value. Therefore, these properties should have been given a \$ countable value in determining Claimant's MA eligibility.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it denied Claimant's MA application based on assets in excess of program limits.

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Re-determine Claimant's eligibility for MA for the December 19, 2014, application in accordance with Department policy.
2. Issue written notice of the determination in accordance with Department policy.
3. Supplement for lost benefits (if any) that Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/22/2015**

Date Mailed: **5/22/2015**

CL / jaf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;

- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

