

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-001810-RECON
Issue No.: 2001
Agency Case No.: [REDACTED]
Hearing Date: December 22, 2015
County: Grand Traverse

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

REHEARING DECISION

This matter is before the undersigned Administrative Law Judge upon an Order Granting Request for Rehearing or Reconsideration issued on November 5, 2015. The underlying request for hearing in this matter is brought 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 conference rehearing was held on December 22, 2015, from Lansing, Michigan. [REDACTED] (Petitioner's daughter) appeared on behalf of Petitioner and [REDACTED] (Petitioner's son-in-law) testified as a witness. Petitioner was deceased at the time of the hearing. Assistant Attorney General (AAG) [REDACTED] ([REDACTED]) represented the Department of Health and Human Services (Department). [REDACTED] (Eligibility Specialist) and [REDACTED] (Assistance Payments Specialist) appeared as witnesses on behalf of the Department.

ISSUE

Did the Department properly deny Petitioner's application for Medical Assistance (MA) or "Medicaid" 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. Petitioner was 94 years old when he entered a nursing facility on November 26, 2014. [Pet. Exh. 10].
2. On December 18, 2014, Petitioner's daughter applied for Medicaid on behalf of Petitioner. [Pet. Exh. 10].
3. At the time of application, Petitioner owned three parcels of real property. Parcel #1 was valued at \$ [REDACTED] [Dept. Exh. 1, p. 6]. Petitioner's remaining two parcels of real property (" [REDACTED] and " [REDACTED] were located in New Mexico. [Pet. Exh. 1 and 2].

4. On October 5, 2014, Commercial First Realty listed [REDACTED] for sale at \$ [REDACTED] and [REDACTED] for \$ [REDACTED] [Pet. Exh. 4].
5. According to the local county 2014 tax bill, [REDACTED] was assessed at \$ [REDACTED] and [REDACTED] was assessed at \$ [REDACTED] [Pet. Exh. 1 and 2].
6. On January 6, 2014, [REDACTED] was reduced to \$ [REDACTED] and [REDACTED] was reduced to \$ [REDACTED] [Dept. Exh. A].
7. The Department determined that Petitioner had total countable assets in the amount of \$ [REDACTED] and that [REDACTED] had a fair market value of \$ [REDACTED] and [REDACTED] was worth \$ [REDACTED] [Dept. Exh. 1, pp. 5-6].
8. On January 22, 2015, the Department mailed Petitioner a Health Care Coverage Determination Notice (DHS-1606) which denied the Medicaid application due to excess assets. The Department also indicated that [REDACTED] and [REDACTED] were countable assets. [Dept. Exh. 1, pp. 1-4].
9. On January 29, 2015, Petitioner's attorney requested a hearing to dispute the Department's decision to deny the Medicaid application.
10. On April 30, 2015, there was an administrative hearing before an Administrative Law Judge (ALJ). Petitioner was represented by his attorney, [REDACTED] ([REDACTED] and the Department was represented by AAG [REDACTED]).
11. On May 22, 2015, the ALJ issued a hearing decision which reversed the Department and ordered a redetermination of Petitioner's Medicaid eligibility.
12. On June 19, 2015, the Department, by counsel, filed a Motion for Rehearing or Reconsideration.
13. Petitioner died on or about June 21, 2015.
14. On November 5, 2015, an Order Granting Request for Rehearing or Reconsideration was issued.
15. On November 6, 2015, the MAHS mailed a Notice of Hearing to all interested parties.¹
16. The rehearing commenced on December 22, 2015. Petitioner's attorney did not appear at the rehearing.

¹ A copy of the notice was mailed to Petitioner's attorney.

CONCLUSIONS OF LAW

There were two main issues that arose during the rehearing. The first issue concerned whether Petitioner's daughter had the requisite authority to proceed on behalf of Petitioner, who had deceased, during the rehearing despite the fact that she has not been appointed as the personal representative of his estate. Here, it should be noted that the Department requested the rehearing based on newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the hearing decision. See BAM 600, page 43. The salient issue concerns the weight of the additional evidence on the existing record. The issue concerning whether Petitioner's daughter is a proper representative is not relevant for purposes of this rehearing. The fact that Petitioner's attorney failed to appear or that Petitioner's putative representative did not possess authority to represent Petitioner during the rehearing does not change the record under review. The order granting rehearing in this matter did not specifically indicate that it was a *de novo* hearing. Because this is not a *de novo* hearing, the ALJ need only determine whether the additional evidence is relevant and should be admitted. In the instant matter, the Department offered additional evidence but Petitioner failed to introduce any new evidence into the record. Accordingly, the ALJ must use the existing record, along with any newly discovered evidence, in order to make a decision. The rehearing in this case is designed to provide the parties with an opportunity to make additional arguments based on the new evidence.

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.

According to Department policy, assets must be considered in determining eligibility for SSI-related MA categories. **Assets** mean cash, any other personal property and real property. **Real property** is land and objects affixed to the land such as buildings, trees and fences. BEM 400, p. 1 (1-1-2015).

Countable assets **cannot** exceed the applicable asset limit. Not all assets are counted. BEM 400, p. 1. For the applicable SSI-related MA category for a group of one, the asset limit is \$2,000.00. BEM 400, p. 7.

The applicable section of policy at issue in this matter is set forth below:

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, p. 13.

Here, the basis for the rehearing revolves around the ALJ's determination that multiple verifications are not required to establish that a parcel of real property is a "non-saleable asset" as defined by BEM 400, p. 13. The Department, on rehearing, provided additional evidence that showed that the initial listing prices for [REDACTED] and [REDACTED] which

were \$ [REDACTED] and \$ [REDACTED] respectively, were later reduced substantially. [Dept. Exh. A, pp. 3-6]. Specifically, the Department submits that if the assigned ALJ had considered the fact that the listing prices for [REDACTED] and [REDACTED] were reduced to \$ [REDACTED] and \$ [REDACTED] respectively, the Department could consider these properties as saleable assets. Both of these recent listing prices, according to the Department, were more consistent with the tax assessment. [Dept. Exh. A, pp. 3-6]. The Department contends that this new evidence shows that the Department did comply with policy when it considered this evidence when processing Petitioner's Medicaid application. Petitioner's daughter did not provide any additional evidence other than to argue that she simply relied upon the realtors from New Mexico with regard to the listing of the parcels in question.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The assigned ALJ determined that the format of BEM 400, page 13, required the Department to determine Petitioner's two parcels of real property had a \$0 value. The ALJ found that BEM 400, page 13 at the second bullet point, provides that the Department shall give a real property asset a \$0 value where an applicant shows that real property were listed for sale for over 90 days. According to the ALJ, the policy language limits the Department from considering additional evidence to help determine Petitioner's Medicaid eligibility. The undersigned respectfully disagrees with this analysis.

The proper question is not whether the specific language of BEM 400, page 13, limits the scope of the Department's ability to determine whether Petitioner's real property assets are "non-saleable" with a \$0 value for purpose of Medicaid eligibility. Such a construction goes against the very principles of the Medicaid program itself. Rather, the salient issue is whether the Department properly processed Petitioner's Medicaid application under the law and consistent with the objectives of the Medicaid program.

The Medicaid program was created by Congress with the intent "to provide benefits to the truly needy." *Mackey v Dep't of Human Servs*, 289 Mich App 688, 697; 808 NW2d 484 (2010). "To be eligible for Medicaid long-term-care benefits in Michigan, an individual must meet a number of criteria, including having \$2,000 or less in countable assets." *Mackey* at 698.

The undersigned agrees that Petitioner's verification documentation from the realtors concerning the earlier values for [REDACTED] and [REDACTED] are consistent with BEM 400, page 13. However, this policy does not require the Department ignore the fact that the prices for these properties were later reduced. In light of the clear objective of the Medicaid program, policy does not require the Department ignore the fact that the initial listing prices for [REDACTED] and [REDACTED] were both grossly inflated. The record clearly shows that the county tax assessor estimated the value of these properties to be much lower. [Dept. Exh. 1 & 2]. In addition, the reduced listing prices for these parcels were much closer to the actual fair market value. Certainly, the Department may consider all statements from the realtor concerning the proper fair market value for the two parcels for purposes of determining whether they meet the definition of non-saleable assets. The Department is not required to blindly accept Petitioner's initial, and more favorable, realtor analysis in order to determine if it is a non-saleable asset.

The method used to determine the Department's intent when it drafted BEM 400 is similar to the manner in which a court reviews legislative intent when reviewing a statute. "When interpreting statutory language, our obligation is to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute." *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). Here, the Department did not intend to require the Department utilize two estimates from "knowledgeable sources" selected by an applicant to determine that an asset is non-saleable for purposes of Medicaid eligibility. With regard to BEM 400, page 13, the Department is not required to accept Petitioner's self-serving sources without looking to additional information. Here, the Department is not only permitted, but required, by policy to obtain relevant information in order to determine eligibility. See BAM 105, pp. 1, 17. This is not consistent with the intent of BEM 400, which is to determine whether an asset is countable. See BEM 400, p. 2. In addition, Medicaid is a program designed for the truly needy for persons who have less than \$2,000 in countable assets. The record shows that Petitioner owned 2 parcels of land in New Mexico, both of which were initially listed well above their fair market value. Under these circumstances, the Department cannot reasonably determine that these two parcels had no current market value. The Department properly considered the tax assessed value of these parcels as well as additional real estate estimates for the value of these properties. Rather, the Department properly found that [REDACTED] and [REDACTED] were both countable assets. Therefore, this Administrative Law Judge finds that the material, competent and substantial evidence on the whole record shows that the Department was correct when it denied Petitioner's Medicaid application due to excess assets.

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 acted in accordance with Department policy when it denied Petitioner's December 19, 2014 application for Medicaid benefits. To the extent relevant and necessary, the assigned ALJ's May 22, 2015 decision is vacated.

DECISION AND ORDER

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



C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Health & Human Services

Date Mailed: 1/4/2016

CAP/las

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:

