

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

IN THE MATTER OF:



MAHS Reg. No.: 15-016480
Issue No.: 2001
Agency Case No.: [REDACTED]
Hearing Date: December 17, 2015
County: Houghton

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

HEARING DECISION

Following Petitioner'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 4-way telephone hearing was held on December 17, 2015, from Lansing, Michigan. The Petitioner was represented by Attorney [REDACTED] [REDACTED]. Petitioner's wife also personally appeared and testified. Petitioner was not present. The Department of Health and Human Services (Department) was represented by Assistant Attorney General [REDACTED] [REDACTED] Family Independence Manager [REDACTED] [REDACTED] and Eligibility Specialist [REDACTED] [REDACTED].

ISSUE

Did the Department properly deny Petitioner's Medical Assistance (MA/Medicaid) application?

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 July 30, 2015 Petitioner applied for Medicaid.
2. On August 26, 2015 the Department mailed Petitioner a Health Care Coverage Determination Notice notifying Petitioner his application for Medicaid was denied because he was over the asset limit. (Dept Ex. A, pp 10-12).
3. On September 3, 2015 Petitioner's Authorized Hearing Representative (AHR) submitted a Request for Hearing contesting the Department's actions because the denial was due to the Department counting real property, which was land and a building adjoining and contiguous to Petitioner's home, which should have been exempt pursuant to BEM 400, pp 31-32. (Dept Ex. A, pp 13-14).

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.

Asset eligibility is required for SSI-related MA categories. BEM 400, p 6 (7/1/2015). Asset eligibility exists when the asset 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, p 6. An asset must be available to be countable. BEM 400, p 9. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p 9. An asset is assumed to be available unless evidence shows it is not available. BEM 400, p 9. Real property is land and objects affixed to the land such as buildings, trees and fences. BEM 400, p 29.

Petitioner applied for Medicaid on July 30, 2015 listing his home and the adjoining land as exempt assets for purposes of determining Medicaid eligibility. Petitioner submitted the 2014 Summer Property Tax Bill showing the adjoining property at [REDACTED] [REDACTED] [REDACTED] had a state equalized value (SEV) of \$ [REDACTED]. Handwritten on the property tax bill was "Rental". The Department determined the fair market value of the real property at [REDACTED] [REDACTED] [REDACTED] by multiplying the SEV of the current property tax records by two. BEM 400, p 30. Therefore, Petitioner's rental property is valued at \$ [REDACTED].

Homes and real property exclusions include the homestead. BEM 400, p 30. According to the Department's Bridges program glossary (BPG), a homestead is defined as the residence that a person owns where they usually live. The homestead includes all adjoining property, any other buildings on the property, but does not include other residences on the property. BPG, p 32 (7/1/2015). Because the definition explicitly says a homestead does not include other residences on the property, in this case another rental home, the Department denied Petitioner's application for SSI-related MA.

Petitioner's AHR contends that BEM 400, pages 31-32, supersedes the definition of homestead listed in the BPG. BEM 400 defines a homestead as where a person lives that they own, are buying, or hold through a life estate or life lease. ***It includes the home, all adjoining land and any other buildings on the land.*** Adjoining land means

land which is not completely separated from the home by land owned by someone else. Adjoining land may be separated by rivers, easements and public rights-of-way (example: utility lines and roads). BEM 400, pp 30-31 (emphasis added).

“Buildings” and “adjoining land” are not defined in the Bridges program glossary “BPG”. Adjoining property is defined as land and buildings located on the land, which touches the land the homestead is on if not separated from the homesteads by other persons’ property. BPG, p 1 (7/1/2015).

The Eligibility Specialist testified that the Department policy and glossary are based on the rules of the Social Security Administration. (Testimony). The Social Security Administration defines exclusion of the home as:

. . . any property in which an individual (and spouse, if any) has an ownership interest and which serves as the individual's principal place of residence. This property includes the shelter in which an individual resides, the land on which the shelter is located and related outbuildings. §416.1212(a).

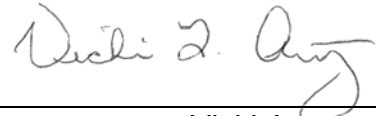
In this case, Petitioner resided on a parcel of land at [REDACTED] [REDACTED] [REDACTED]. Both BEM 400 and the glossary define the homestead as the place where you live. In this case, Petitioner and his spouse resided at [REDACTED] [REDACTED] [REDACTED] prior to going into the nursing home. Therefore, there is no question that the residence and parcel of land at [REDACTED] is excluded under the Homestead exception.

The issue is whether the adjoining property located at [REDACTED] [REDACTED] [REDACTED] which has a rental property on it, is also excluded under the Homestead exception. According to BEM 400, the homestead includes the home, all adjoining land and any other buildings on the land. The glossary defines a homestead as all adjoining property, any other buildings on the property, but does not include other residences on the property. And the policy’s implementing regulation at 20 CFR 416.212 defines a homestead as any property in which an individual (and spouse, if any) has an ownership interest and which serves as the individual's principal place of residence. This property includes the shelter in which an individual resides, the land on which the shelter is located and related outbuildings. §416.1212(a).

Reviewing the plain language of property excluded under the Homestead Exclusion, the rental property adjoining the property where Petitioner and his spouse resided does not fall under the Homestead Exclusion for MA-SSI because it is not an outbuilding but another residence. §416.1212(a). As a result, this Administrative Law Judge finds that the Department acted in accordance with policy when it denied Petitioner’s Medicaid application for over assets.

DECISION AND ORDER

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



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **1/13/2016**

VA/nr

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:

