

4. On October 16, 2015, the Department notified the Claimant that his Medical Assistance (MA) application and request for retroactive benefits had been denied based on his countable assets.
5. On November 2, 2015, the Department received the Claimant's request for a hearing protesting the denial of his Medical Assistance (MA) application.

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.

Assets means cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. Personal property is any item subject to ownership that is not real property. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (October 1, 2014), pp 1-7.

The Department will give an 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.
- 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 actual sale 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 actual sale 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, pp 13-14.

On June 24, 2015, the Department received the Claimant's application for Medical Assistance (MA) along with a request for retroactive benefits. In his application for benefits, the Claimant reported all of his assets including his homestead residence and his business, which is located on commercial real estate that is adjacent to his homestead. The Department denied the Claimant's MA application and request for retroactive benefits based on the total countable value of his assets. On October 16, 2015, the Department sent the Claimant notice of this denial.

The Claimant argues that the Department improperly included full value of the commercial real estate as a countable asset because it is non-salable.

The Claimant's representative provided documents showing that the Claimant's commercial property has been listed for sale with a real estate agent since February 3, 2015, and there is no evidence that the Claimant has received a reasonable offer to purchase since then.

The Assistant Attorney General argued that the commercial property has been linked to other property as part of a scheme to make the properties unsalable so that they can preserve assets and become eligible for MA benefits.

This Administrative Law Judge finds that it is not relevant whether there was a scheme to preserve assets. The issue to be decided here is whether the Department properly denied the Claimant's application based on a determination of countable assets. Furthermore, a determination of the fair market value of the commercial property is not necessary here because regardless of the method used to determine the fair market value, it is not disputed that this value will exceed the limit to receive MA benefits.

The Claimant's homestead is excludable from countable assets under BEM 400. The Claimant's commercial property would have a countable value of \$0 as directed by BEM 400 if it is found to be unsalable as noted on the Claimant's application.

The Claimant's witness, as a licensed real estate professional, determined that the value of the Claimant's property would be maximized if his homestead was marketed and sold in combination with his commercial property. It should be of no concern to the Department how the Claimant manages his property or how it is marketed for sale. The Claimant's eligibility for MA benefits does not depend on the sale of the commercial property. Once the property is sold, the proceeds of such a sale would also be a countable asset.

The Claimant's MA eligibility is affected by the Department's determination of the salability of his commercial property. The evidence supports a finding that the commercial property was listed for sale as of February 3, 2015, and there is no evidence that the Claimant refused any offers to purchase. While BEM 400 requires that for MA applicants, an actual sale attempt to sell must have started at least 90 days prior to application and must continue until the property is sold, there must also be evidence supporting that the property is unsalable.

BEM 400 does not require the Department to find a property that has been on the market for more than 90 days without an offer is per se unsalable. A property can be found to be unsalable under BEM 400, for example, in cases where the property is contaminated with heavy metals, but that a finding of nonsalable is to be shown by through a knowledgeable source such as a realtor. While the Claimant's realtor and the Department may not agree about the best way to market the Claimant's property and whether its fair market value is higher or lower than the state equalized value, no evidence of the commercial property's salability was presented on the record except for that fact that no offers to purchase have been received.

The Claimant's realtor witness testified that the commercial property is a unique property with lake access and has potential for further commercial development. The Claimant's realtor witness testified that a property of this nature cannot be sold as quickly as residential real estate can.

No evidence was presented on the record that the Claimant has been unable to sell his commercial real estate since February 3, 2015, due to an overabundance of similar properties on the market, physical defects in the property or its improvements that make it undesirable, or any other characteristics of the Claimant's property. The only argument against salability has been by the Assistant Attorney General that the Claimant's bundled property will be less likely to sell, which was rebutted by the Claimant's real estate professional's opinion that combined the properties are more desirable.

Therefore, this Administrative Law Judge finds that the evidence on the record as a whole supports a finding that the Claimant's commercial property is not unsalable, and therefore its countable value is its fair market value, which exceeds [REDACTED]

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 the Claimant's Medical Assistance (MA) application based on his countable assets.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.



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Kevin Scully
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **2/10/2016**

KS/db

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:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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