



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 9, 2016
MAHS Docket No.: 15-021079
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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, an in-person hearing was held on February 9, 2016, from Sault Sainte Marie, Michigan. [REDACTED] the Petitioner, appeared on his own behalf. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist, and [REDACTED], Assistance Payments Supervisor.

The Department's Hearing Summary Packet was admitted as Department Exhibit A, pp. 1-29.

The correspondences received from Petitioner between November 2015 and January 2016, were not admitted as exhibits. In large part, the correspondences raised issues beyond scope of the sole issue there is jurisdiction to address for this Administrative Hearing, the Department's determination that Petitioner is not eligible for the requested Medicaid program. Petitioner was given the opportunity to present argument, testimony, and any relevant documentary evidence regarding this issue during the February 9, 2016, in-person hearing proceedings. Additionally, Petitioner's requests and motions contained in the correspondences were previously responded to by the December 18, 2015, Order Granting Adjournment; the January 8, 2016, Order Denying Request for Subpoena; and the February 1, 2016, Order Denying Motions to Disqualify Administrative Law Judge Colleen Lack and Order Denying Request for a Representative.

ISSUE

Did the Department properly determine Petitioner's eligibility for the Medicare Savings Program (MSP)?

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 September 16, 2015, Petitioner submitted a DCH 1426 Application for Health Coverage and Help Paying Costs. (Department Exhibit A, pp. 22-29)
2. On September 23, 2015, Petitioner submitted a DHS-1004 Health Care Coverage Supplemental Questionnaire. (Department Exhibit A, pp. 19-21)
3. Petitioner filed the Medicaid application solely for help to pay his monthly Medicare premiums. (Department Exhibit A, p. 2)
4. At that time of the application, Petitioner was [REDACTED] years old (date of birth [REDACTED]), and he reported living at [REDACTED]. (Department Exhibit A, pp. 23-24)
5. On September 25, 2015, the Department obtained verification through the Chippewa County Equalization Office of ownership and value of properties located at [REDACTED] and [REDACTED]. (Department Exhibit A, pp. 15-16 and 17-18)
6. On September 25, 2015, a Health Care Coverage Determination Notice was issued to Petitioner, in part, stating his application was denied because the value of his countable assets is higher than allowed for this program. (Department Exhibit A, pp. 11-13)
7. On October 6, 2015, Petitioner filed a hearing request. (Department Exhibit A, pp. 2-7; Hearing Request)

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.

Medicare Savings Programs (MSP) are SSI-related MA categories. BEM 165, January 1, 2015, p. 1.

Financial eligibility factors for the MSP include that countable assets cannot exceed the limit in BEM 400. Countable assets are determined based on MA policies in BEM 400, 401 and 402. BEM 165, p. 7.

For the MSP, effective January 1, 2015, the income limit for a group size of one was \$7,280. BEM 400, July 1, 2015, p. 7.

The BEM 400 policy further addresses assets:

Homes and Real Property

FIP, SDA, RCA, SSI-Related MA Only and FAP

This section is about the following types of assets:

- Real property.
- Mobile homes.
- Life estates and life leases.

BEM 400, p. 29.

Real Property and Mobile Home Value

FIP, SDA, RCA, SSI-Related MA Only and FAP

To determine the fair market value of real property and mobile homes use:

- Deed, mortgage, purchase agreement or contract.
- State Equalized Value (SEV) on current property tax records multiplied by two.
- Statement of real estate agent or financial institution.
- Attorney or court records.
- County records.

BEM 400, p. 30

Life Estate/Life Lease Definition

FIP, SDA, RCA, SSI-Related MA Only and FAP

A life estate or life lease gives the person who holds it certain rights to property during the person's lifetime. Usually, the right is the right to live on the property. The person holding the life estate or life lease can sell it, but does **not** own the actual property and normally **cannot** sell the actual property.

BEM 400, pp. 30-31.

Life Estate/Life Lease Value

FIP, SDA, RCA, SSI-Related MA Only and FAP

Use the life estate factors in Exhibit II to compute the value of a life estate or life lease. Choose the life estate factor that corresponds to the person's age. Multiply the fair market value of the actual property by the appropriate life estate factor. The result is the value of the life estate or life lease.

SSI-Related MA Only

Use the value of the life estate to determine if the purchase price was for fair market value when a person purchases a life estate in another individual's home.

When a person purchases a life estate in another individual's home, they must actually reside there for at least one year after the date of purchase to qualify for the homestead exclusion. If the person resides in the home for less than one year, treat the transaction as a transfer of assets. The amount of the transfer is the entire amount used to purchase the life estate. See BEM 405, MA DIVESTMENT to determine the penalty period.

BEM 400, p. 31.

At age ■, the life estate factor is .50441. BEM 400, p. 64.

BEM 400 also addresses home and real property exclusions:

Homestead Definition and Exclusion

SSI-Related MA Only and FAP

A homestead is where a person lives (unless **Absent from Home-stead**, see below) that they own, is buying or holds 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).

SSI-Related MA Only

Determine the equity value of the homestead; see **Real Property and Mobile Home Value** in this item.

MA will not pay the client's cost for:

- Home health services.
- Home and community-based services (MIChoice Waiver).
- LTC services.
- Home Help.

When the equity in the client's homestead exceeds:

- \$500,000 in 2010.
- \$506,000 starting in January 2011.
- \$525,000 starting January 1, 2012.
- \$536,000 starting January 1, 2013.
- \$543,000 starting January 1, 2014.
- \$552,000 starting January 1, 2015.

Exclude the asset group's homestead. Do not apply the home equity limit to the client if the spouse, child under 21, or the client's blind or disabled child is residing in the home.

SSI-Related MA Only

Exclude only one homestead for an asset group. If an individual claims two homesteads, exclude the homestead of the individual's choice.

BEM 400, pp. 31-32

In this case, Petitioner filed the Medicaid application solely for help to pay his monthly Medicare premiums. (Department Exhibit A, p. 2) Accordingly, Petitioner's eligibility for Medicare Savings Program (MSP) is the only Medicaid program eligibility that will be reviewed.

On the September 16, 2015, application Petitioner reported living at [REDACTED]. At that time Petitioner was [REDACTED] years old (date of birth [REDACTED]). (Department Exhibit A, pp. 23-24)

On September 25, 2015, the Department obtained verification through the Chippewa County Equalization Office of the ownership and value of properties located at [REDACTED] and [REDACTED]. Both properties indicate the owner as [REDACTED] & [REDACTED]. (Department Exhibit A, pp. 15-16 and 17-18) Accordingly, these records confirm that Petitioner retained a life estate in both properties.

Petitioner asserts that the properties should not count as assets because they belong to his son. However, under the above cited BEM 165 and 400 policies, life estates are countable assets for the MSP, which is an SSI related MA category. Accordingly, the Department properly considered Petitioner's life estates as assets in determining eligibility.

The BEM 400 policy specifically only allows for one homestead to be excluded for an asset group. The evidence indicates the Department excluded the life estate for the property Petitioner reported living at, [REDACTED], which has the significantly higher SEV. (Testimony and Department Exhibit A, pp. 15-18, and 23) Accordingly, the exclusion was applied in the most favorable way for determining Petitioner's eligibility.

As noted above, effective January 1, 2015, the income limit for the MSP for a group size of one was \$7,280. BEM 400, p. 7.

It appears that the Department may have utilized just State Equalized Value (SEV) on current property tax records multiplied by two to determine the value of the remaining life estate at [REDACTED]. Specifically the listed 2015 SEV of \$ [REDACTED] multiplied by two resulted in a determination that the fair market value was \$ [REDACTED]. (Testimony and Department Exhibit A, pp. 15-16b) As cited above, BEM 400 directs that a life estate factor also be utilized in determine the value. Specifically, the policy directs that the life estate factor corresponding to the person's age be

multiplied by the fair market value to determine the value of the life estate. For age [REDACTED], the listed life estate factor is .50441. BEM 400, p. 64. Accordingly, the value of the life estate for this property should be calculated by multiplying \$ [REDACTED] (the fair market value) by .50441 (the life estate factor), which equals \$ [REDACTED]. The value of Petitioner's life estate for this property exceeds the applicable income limit of \$ [REDACTED]. Accordingly, there is no need to consider the value of any other countable asset Petitioner may have had. The Department's determination to deny MSP benefits for the Petitioner based on assets in excess of program limits for the MSP must be upheld.

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's determination that Petitioner was not eligible for the MSP based on assets in excess of program limits was in accordance with Department policy.

DECISION AND ORDER

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

CL/mc



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

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

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

DHHS

[REDACTED]

Petitioner

[REDACTED]