



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: May 18, 2016
MAHS Docket No.: 16-003193
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, telephone hearing was held on April 26, 2016, from Lansing, Michigan. Participants on behalf of Petitioner included [REDACTED] and [REDACTED]. [REDACTED] (Assistance Payments Supervisor) represented the Department of Health and Human Services (Department).

ISSUE

Did the Department of Health and Human Services (Department) properly close the Petitioner's Medical Assistance (MA) benefits?

FINDINGS OF FACT

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

1. The Petitioner was an ongoing Medical Assistance (MA) recipient.
2. On January 10, 2013, the Petitioner sold real property by land contract for the sum of \$ [REDACTED] Exhibit A, pp 6 – 13.
3. On December 16, 2014, the Department audited the Petitioner's benefit case. Exhibit A, pp 2 – 5.
4. The Department determined that the real property sold by the Petitioner on January 10, 2013, has a fair market value of \$ [REDACTED] Exhibit A, p 14.

5. The Department determined that the Petitioner has cash assets totaling \$ [REDACTED] Exhibit A, p 19.
6. On December 22, 2015, the Department notified the Petitioner that it would close her Medical Assistance (MA) benefits as of February 1, 2016. Exhibit A, pp 22 – 25.
7. On January 28, 2016, the Petitioner sent a request for a hearing to the Michigan Administrative Hearing System (MAHS) for a Medical Assistance (MA) benefits related hearing. Exhibit A, p 28.
8. On February 12, 2016, the Michigan Administrative Hearing System (MAHS) identified the Petitioner's grievance as being Medical Assistance (MA) eligibility related and forwarded her hearing request to the Department. Exhibit A, p 27.
9. On February 19, 2016, the Department received the Petitioner's request for a hearing protesting the closure of her Medical Assistance (MA) benefits.

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 (January 1, 2016), pp 1-7.

The Petitioner was an ongoing MA recipient when the Department conducted an audit on her case on December 16, 2014, which concluded that her countable assets had not been properly determined.

On December 22, 2015, the Department notified the Petitioner that it would close her MA benefits as of February 1, 2016, after determining that her countable assets exceed the \$2,000 limit listed in BEM 400 for a SSI related MA group of one.

On January 10, 2013, the Petitioner signed a land contract as the seller of real property. The land contract indicates that the Petitioner agreed to sell real property to the purchaser for the sum of \$ [REDACTED]. The Department's representative testified that it determined that this property has a fair market value of \$ [REDACTED] which was determined by doubling the state equalized value (SEV) as directed by policy. The Department applied the \$ [REDACTED] income producing real property exclusion, which lowered the countable value of this property to \$ [REDACTED] BEM 400, p 35. When combined with her \$ [REDACTED] cash assets, the Department determined that the Petitioner is not eligible for MA benefits because she exceeds the \$2,000 asset limit.

This Administrative Law Judge finds that the Department improperly counted the value of the real property as income producing real property because the Petitioner sold this property to another person by land contract. This does not mean that the property has no value to the Petitioner as an asset but since the real property has been sold by land contract, it now meets the definition of a promissory note. BEM 400, p 40.

A note is a written promise to pay a certain sum of money to another person at a specified time. The note may call for installment payments over a period of time (installment note) or a single payment on a specified date. The most common type of note involves the sale of real property and is called a land contract or a mortgage. The person who sold the property is holder of the note. The note is the holder's asset. BEM 400, p 40.

The value of a promissory note, land contract or mortgage is the amount it can be sold for in the holder's geographic area on short notice (usually at a commercial discount rate) minus any lien on the property the holder must repay. If the note meets the requirements listed above, then the note itself may not be a countable asset. The payments are countable unearned income. BEM 400, p 41.

Instead of determining the value of the promissory note, the Department used the fair market value of the land without consideration of whether the Petitioner could sell the promissory note for that amount. The Department also failed to consider the payments made since January 10, 2013, as a reduction of the value of the promissory note on December 22, 2015. The Department also failed to consider that the promissory note indicates that the [REDACTED] is listed as an additional insured lien holder on the real property and any outstanding mortgages on this property would also limit the net value of the note to the Petitioner as directed by BEM 400.

The Petitioner testified the result of the January 10, 2013, land contract was that the purchase took over the payments and insurance costs leaving her with no net value other than the reduction of her obligation to pay those payments. Furthermore, whether the payments made on this contract should be considered unearned income is beyond the scope of this hearing because MA benefits were closed based on countable assets.

Based on the evidence and testimony available during the hearing, this Administrative Law Judge does not have sufficient evidence to establish that the Petitioner's countable assets are less than \$2,000, but the evidence does not support a finding that the Department properly determined her countable assets either.

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 closed the Petitioner's Medical Assistance (MA) benefits based on her countable assets.

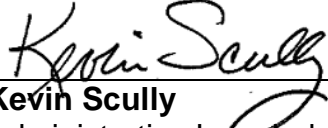
DECISION AND ORDER

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:

Initiate a determination of the Petitioner's eligibility for Medical Assistance (MA) as of February 1, 2016, in accordance with policy with adequate notice to the Petitioner.

KS/las



Kevin Scully
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

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Petitioner

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