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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 7, 2016
MAHS Docket No.: 16-001511
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

HEARING DECISION

Following a request for a hearing submitted by Petitioner's Attorney Andrew F. Wood, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 - 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on April 19, 2016, from Lansing, Michigan. Petitioner did not appear but was represented at hearing by Attorney's [REDACTED] and [REDACTED]. Petitioner's wife [REDACTED] and son-in-law [REDACTED] were present. [REDACTED], Petitioner's son-in-law testified on Petitioner's behalf. Petitioner offered Petitioner's Exhibits 1-104, which were admitted.

The Department of Health and Human Services (Department), Respondent, was represented by Assistant Attorney [REDACTED]. Assistance Payment Supervisor [REDACTED] and Eligibility Specialist [REDACTED] were present. Long Term Care Specialist [REDACTED], testified as a witness on behalf of the Department. Department's Exhibit A (pages 1-185) was admitted.

On April 19, 2016, the hearing was adjourned. On April 20, 2016 an Order for Continuance was issued with the contested case hearing scheduled for 1:30 p.m. on May 10, 2016 in the above-captioned matter.

On May 10, 2016, the hearing continued. Petitioner did not appear but was represented at hearing by Attorney [REDACTED]. Petitioner's wife [REDACTED] and Petitioner's son-in-law [REDACTED], testified on Petitioner's behalf. Petitioner offered Petitioner's Exhibits 105-117, which were admitted.

The Department of Health and Human Services (Department), Respondent, was represented by Assistant Attorney [REDACTED]. Assistance Payment Supervisor [REDACTED] was present. Eligibility Specialist [REDACTED] testified as a witness on behalf of the Department.

The record closed at the conclusion of the hearing.

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 85 years old when he entered a nursing facility on August 4, 2015. [Pet. Exh. 10].
2. On August 21, 2015, Petitioner's attorney applied for Medicaid on behalf of Petitioner. [Dept. Exh. A, pp 182-185].
3. At the time of application, Petitioner submitted a survey for the [REDACTED] parcel indicating the parcel had been appraised for \$ [REDACTED] based on the proposition that it could be divided into five lots. The survey listed the five lots as A, B, C, D and E. Appraisals were submitted indicating lots C and D were appraised for \$ [REDACTED] each. Lot A was appraised for \$ [REDACTED] and lots B and E were appraised for \$ [REDACTED] each. The [REDACTED] properly was listed for \$ [REDACTED] on December 14, 2014. [Dept. Exh. A, pp 85-128].
4. The Department determined that the Fair Market Value (FMV) for the [REDACTED] parcel was \$ [REDACTED]. [Dept. Exh. A, pp 92-93].
5. Petitioner also submitted appraisals for three parcels listed as one property for sale on [REDACTED] for \$ [REDACTED]. Total acreage for the listing was [REDACTED] acres. Parcels 002 and [REDACTED] were each [REDACTED] acres and were appraised for \$ [REDACTED] each. Parcel 007 consisted of [REDACTED] acres was appraised for \$ [REDACTED]. The appraisal listed the three parcels together for sale for \$ [REDACTED] ($\$ [REDACTED] + \$ [REDACTED] + \$ [REDACTED] = \$ [REDACTED]$) [Dept. Exh. A, pp 138-139].
6. Parcel 002 had an SEV of \$ [REDACTED]. The Department multiplied the SEV by two for a FMV of \$ [REDACTED] ($\$ [REDACTED] \times 2 = \$ [REDACTED]$) [Dept. Exh. A, pp 129, 134-137].
7. The parcel identified as [REDACTED] had an SEV of \$ [REDACTED]. The Department multiplied the SEV by two for a FMV of \$ [REDACTED] ($\$ [REDACTED] \times 2 = \$ [REDACTED]$) [Dept. Exh. A, pp 155-158].
8. Parcel 007 consisted of [REDACTED] acres and had an SEV of \$ [REDACTED]. The Department multiplied the SEV by two for a FMV of \$ [REDACTED] ($\$ [REDACTED] \times 2 = \$ [REDACTED]$) [Dept. Exh. A, pp 42,147-149].

9. On November 4, 2015, the Department mailed Petitioner a Health Care Coverage Determination Notice (DHS-1606) which denied the Medicaid application due to excess assets. The Department indicated that the properties listed for sale must be at or below fair market value (FMV). The only property listed at or below FMV was the [REDACTED] and that parcel was considered non-saleable. The [REDACTED] and the vehicle were also considered non-saleable assets. The [REDACTED] parcel remained an asset in Petitioner's wife's trust along with the (4) bank accounts. The Department added that if Petitioner reapplies, the value of the classic cars gifted to his daughter valued at \$ [REDACTED] (sic \$ [REDACTED] would be considered a divestment at that time.

The Department valued the remaining properties:

[REDACTED]

[REDACTED]

[Dept. Exh. A, pp. 168-173].

10. On February 1, 2016, Petitioner's attorneys requested a hearing to dispute the Department's decision to deny the Medicaid 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.

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 (emphasis added).

In this case, Petitioner requests that the Department use the Realtor's appraisals to determine the fair market value of the [REDACTED] parcel. Petitioner asserts the Department erred by using the SEV multiplied by two to value these properties when

the Department was in possession of the Real Estate agent's appraisals. Petitioner believes that because they listed their properties in good faith with the intent to sell the" and waited the required 90 days to treat the properties as unsaleable before applying for Medicaid, the parcels should be deemed unsaleable.

Departmental policy instructs caseworks that 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 (7/1/2015).

In this case, the Department used the SEV multiplied by two to value the real properties. According to the Summer 2015 property taxes, the [REDACTED] property had an SEV of \$ [REDACTED] (Dept. Exh. A, p 92). Multiplying the SEV by two, the Department determined the Van Buren Street parcel to be valued at \$ [REDACTED] X 2 = \$ [REDACTED]

Petitioner submitted a survey showing the Van Buren Street parcel divided into five parcels. The survey listed the five lots as A, B, C, D and E. Lot A was appraised for \$ [REDACTED] and lots B and E were appraised for \$ [REDACTED] each while lots C and D were appraised for \$ [REDACTED] each. Based on the appraisal, the recommended list price was \$ [REDACTED]. The [REDACTED] property was listed for \$ [REDACTED] in December, 2014, as a [REDACTED]-acre parcel, not as divided into 5 lots.

The Department determined the FMV of the [REDACTED] parcel was \$ [REDACTED] based on multiplying the SEV of \$ [REDACTED] by two ($\$ [REDACTED] \times 2 = \$ [REDACTED]$). Due to the almost \$ [REDACTED] discrepancy between twice the SEV ($\$ [REDACTED]$) and the real estate agent's appraisal ($\$ [REDACTED]$) the Department found the SEV was the proper valuation of the property and the [REDACTED] parcel was a countable asset. [Dept. Exh. A, pp 92-93].

Petitioner asserts that the Department must consider the appraisals from disinterested knowledgeable source. However, the certified appraisals for the [REDACTED] property were from [REDACTED], President/Broker of [REDACTED]. (Dept. Exh. A, pp 90-91). [REDACTED] is Petitioner's son-in-law and, therefore, not a disinterested source.

Petitioner also contends that the Department erred in using twice the SEV for the parcels identified as 002, [REDACTED] and 007 listed together as one property for sale at \$ [REDACTED]. Petitioner submitted an appraisal of the [REDACTED] acres consisting of

three parcels identified as 002, [REDACTED] and 007 listed together as one property with a list price of \$ [REDACTED]. Parcels 002 and [REDACTED] were each [REDACTED] acres and appraised for \$ [REDACTED] each. Parcel 007 consisted of [REDACTED] acres and was appraised for \$ [REDACTED]. The appraisal listed the three parcels together for sale as one property for \$ [REDACTED] ($\$ [REDACTED] + \$ [REDACTED] + \$ [REDACTED] = \$ [REDACTED]$) [Dept. Exh. A, pp 138-139].

The Department used the SEV's of each parcel multiplied by two to determine the parcels FMV. Parcel 002 had an SEV of \$ [REDACTED]. The Department multiplied the SEV by two for a FMV of \$ [REDACTED] ($\$ [REDACTED] \times 2 = \$ [REDACTED]$) [Dept. Exh. A, pp 129, 134-137]. The Drummond Island parcel had an SEV of \$ [REDACTED]. The Department multiplied the SEV by two for a FMV of \$ [REDACTED] ($\$ [REDACTED] \times 2 = \$ [REDACTED]$) [Dept. Exh. A, pp 155-158]. Parcel 007 consisted of [REDACTED] acres and had an SEV of \$ [REDACTED]. The Department multiplied the SEV by two for a FMV of \$ [REDACTED] ($\$ [REDACTED] \times 2 = \$ [REDACTED]$) [Dept. Exh. A, pp 42,147-149].

<u>Parcel</u>	<u>SEV</u>	<u>FMV</u>	<u>Appraisal</u>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Petitioner submitted a broker's breakdown on how the price of \$ [REDACTED] was determined. The broker explained that if sold altogether, the three parcels would probably sell for around \$ [REDACTED] or \$ [REDACTED]. The broker further explained that if the property were split up in shore lots and three acre parcels, there was a good chance to realize \$ [REDACTED] or more. [REDACTED] stated that the broker meant that there was a good chance to realize \$ [REDACTED] or more if parcel 007 was further divided into shore lots and three acre parcels. [Dept. Exh. A, pp 138-139, 148]. Either way, Petitioner chose to list the three parcels as one piece of property for \$ [REDACTED].

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 as 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. Petitioner asserts 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 was listed for sale for over 90 days.

This Administrative Law Judge finds that 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 purposes 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.

In light of the clear objective of the Medicaid program, policy does not require the Department to ignore the fact that the listing prices for the [REDACTED] parcel and parcels 002, [REDACTED] and 007 were all grossly inflated. The record clearly shows that the county tax assessor estimated the value of these properties to be much lower. [Dept. Exh. A, pp 92-93, 129, 134-137, 142, 147-150, 155-158].

Certainly, the Department may consider all statements from the realtor concerning the proper fair market value for the four parcels for purposes of determining whether they meet the definition of non-saleable assets. However, 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 to 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 persons who have less than \$2,000 in countable assets. The record shows that Petitioner owned 4 parcels of land, all of which were initially listed well above their fair market value. Under these circumstances, the Department cannot reasonably determine that these four parcels had no current market value. The Department

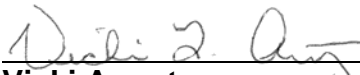
properly considered the tax assessed value of these parcels as well as additional real estate estimates for the value of these properties. Rather, the Department properly found that the [REDACTED], 002, [REDACTED] and 007 parcels were all countable assets. Therefore, this Administrative Law Judge finds 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 August 21, 2015 application for Medicaid benefits.

DECISION AND ORDER

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

VLA/las



Vicki Armstrong
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

Counsel for Respondent

[REDACTED]

DHHS

[REDACTED]

Counsel for Petitioner

[REDACTED]

Petitioner

[REDACTED]