



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: June 6, 2016
MAHS Docket No.: 16-004486
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION

Following the Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on June 1, 2016, from Lansing, Michigan. The Petitioner, [REDACTED], was represented by her Authorized Hearing Representative (AHR), [REDACTED] paralegal from [REDACTED]. The Department of Health and Human Services (Department) was represented by Assistance Payments Supervisor, [REDACTED].

PROCEDURAL HISTORY

Manager, Jan Carroll and Case Worker [REDACTED] appeared and testified on behalf of the Department. The Petitioner was not present for the hearing. The hearing was originally scheduled to be held on May 24, 2016. On May 3, 2016, the Petitioner's AHR requested an adjournment due to a scheduling conflict. On May 5, 2016, Administrative Law Judge Colleen [REDACTED] issued an Adjournment Order. The hearing was then scheduled for June 1, 2016 and commenced as rescheduled. The following exhibits were offered and admitted into evidence:

Department: A--Bridges Divestment Details.
B--Bridges Asset budget.
C--March 16, 2016, Health Care Coverage Determination Notice.
D--December 12, 2016, Case Comments.

Petitioner: None.

ISSUE

Whether the Department properly determined the Petitioner's divestment penalty for her Medical Assistance (MA) 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 November 16, 2015, the Department received the Petitioner's application for Long Term Care.
2. When processing the application, the Department's worker did not use the Petitioner's submitted verification of a 2015 Summer Tax statement indicating that the Petitioner's property had a taxable value of \$ [REDACTED]. Instead, the Department's worker telephoned the [REDACTED] Office and was informed that the SEV of the property was \$ [REDACTED] and the Department's worker used the SEV value, multiplied by two, in the divestment calculations. During the hearing, there was no persuasive evidence given as to why the Department's worker disregarded the verification submitted.
3. On March 16, 2016, the Department sent the Petitioner a Health Care Coverage Determination Notice informing the Petitioner of an \$ [REDACTED] monthly patient pay from 10/1/2015 to 12/16/2016.
4. On March 28, 2016, the Department received the Petitioner's AHR's written hearing request protesting the divestment period.

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), and Department of Health and Human Services Reference Tables Manual (RFT).

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.

In this case, the only issue disputed at the hearing was the value assigned to the real estate in the Petitioner's divestment penalty calculation. The Petitioner's AHR testified that the Petitioner's home is part of cooperative. The worker who telephone the [REDACTED] [REDACTED] instead of using the verification submitted was not present at the hearing. There was speculation on the part of the Department that perhaps that worker telephoned the [REDACTED] because she had questions about the verification submitted.

Bridges Eligibility Manual (BEM) 400 (2016) defines assets as 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. It instructs Department workers that, to determine the fair market value of real property the following is to be used:

- 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.

As such, this Administrative Law Judge concludes that when determining the value of the property it would seem in accordance with departmental policy to use the SEV of the property times two. The Department's workers at the hearing were perhaps correct when they speculated that the worker who took action likely had questions based on the verification submitted by the Petitioner. Regardless, that worker did telephone the County tax office and obtained the SEV, and did multiply it by two, to arrive at the figure used in the divestment.

Bridges Administrative Manual (BAM) 130 (2016) p. 8, provides that the Department's worker, before determining eligibility, give the client a reasonable opportunity to resolve any discrepancy between her statements and information from another source. In this case, the Department's worker should have given the Petitioner an opportunity to resolve the discrepancy between the verification submitted to the figure provided by the county tax office. This is particularly true, as the Petitioner's AHR argues that the real estate is part of a cooperative and that this can be valued somewhat differently.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED/ REVERSED**.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, INCLUDING ISSUING A NEW ELIGIBILITY DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Redetermine the Petitioner's eligibility for Long Term Care back to November 16, 2015, and
2. Give the Petitioner an opportunity to resolve any discrepancies between her statement and submitted verifications and information from another source before determining eligibility, and

3. The Petitioner retains the right to request a hearing on the new eligibility determination.

Susanne E. Harris

SH/nr

Susanne E. Harris
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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Agency Representative

[REDACTED]

Petitioner

[REDACTED]