



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: October 28, 2016
MAHS Docket No.: 16-012643
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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, a telephone hearing was held on October 11, 2016, from Lansing, Michigan.

APPEARANCES

Petitioner:

[REDACTED] Attorney/Witness
[REDACTED] Attorney/Witness
[REDACTED] Paralegal

Department:

[REDACTED] Assistance Payments Supervisor
[REDACTED] Long Term Care Specialist
[REDACTED] Assistant Attorney General

Observer:

[REDACTED] Paralegal for attorney Carrier

ISSUE

Did the Department properly deny Petitioner’s application for long-term care (LTC) Medical Assistance (MA)?

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's attorney submitted an application for LTC on January 27, 2016, for Petitioner, and another application for LTC on the same date for Petitioner's spouse, [REDACTED].
2. The spouse was admitted to LTC on July 5, 2015, and Petitioner was admitted to LTC on July 7, 2015.
3. The spouse died on [REDACTED].
4. Petitioner's income tax returns for 2014 and 2015 (Petitioner's Exhibits C and D) indicate that Petitioner and his spouse show that they had rental income from a single-family residence at [REDACTED]. See Schedule E Form 1040 which shows income of \$ [REDACTED] for 2015 at line 26.
5. The property at [REDACTED] is identified as tax parcel [REDACTED] (Exhibit H) and has an SEV of \$ [REDACTED].
6. Petitioner's income tax returns for 2014 and 2015 show that they reported a profit/loss from farming (Schedule F Form 1040) with principal activity of swine.
7. Petitioner's wife's application for MA was denied in a Health Care Coverage Determination Notice (Exhibit 1 Pages 26-30) because the Department determined Petitioner's assets exceeded the allowable limits as follows:
 - a. Vehicles exceeded \$ [REDACTED] in value;
 - b. Real property exceeded \$ [REDACTED] in value.
8. Petitioner's vehicles include the following, with the values determined by the Department which were not contested by the Petitioner:
 - a. 2004 Mercury Marquis - \$ [REDACTED]
 - b. 1973 IHC stake truck (flatbed) - \$ [REDACTED]
 - c. 2008 Kawasaki Mule - \$ [REDACTED]
 - d. 2002 Dodge Pickup - \$ [REDACTED]
9. The stake truck, mule, and pickup are all identified as assets used in the raising of livestock in the Federal Asset Report attached to Petitioner's federal tax returns.

10. Petitioner's real estate holdings include the following, with values determined by the Department, and alternative values determined by the Petitioner. The property is identified by parcel number, approximate lot size, and type of property. "SEV" is the State Equalized Value determined by the township assessor as indicated in the tax rolls. The first table has the values determined by the Department, and the second table has the values determined by the Petitioner.

Department's Description

Parcel #	Size	Property Type/Zoning	SEV (2015)	SEV x 2
██████████	80 acres	Homestead/Ag-1	\$ ██████████	\$ ██████████
██████████	77.10 acres	Agricultural/Ag-1	\$ ██████████	\$ ██████████
██████████	153.40 acres	Agricultural/Ag-1	\$ ██████████	\$ ██████████
██████████	3.6 acres	Agricultural/Ag-1	\$ ██████████	\$ ██████████
██████████	80 acres	Jointly owned with two others. 1/3 value attributed to Petitioner.	\$ ██████████	\$ ██████████
Total			\$ ██████████	\$ ██████████

Petitioner's Description

Parcel #	Size	Property Type	SEV	SEV x 2
██████████ And ██████████	157.10 acres	Homestead – two adjacent parcels combined into one September 16, 2015	\$ ██████████	\$ ██████████
██████████	153.40 acres	Agricultural/Ag-1	\$ ██████████	\$ ██████████
██████████	3.6 acres	Agricultural/Ag-1	\$ ██████████	\$ ██████████
██████████	80 acres	Jointly owned with two others. 1/3 value attributed to Petitioner.	\$ ██████████	\$ ██████████
Total			\$ ██████████	\$ ██████████

11. The two-year comparison report (Exhibit C) report losses from farming for the 2014 and 2015 tax returns, as well as rental income for 2015. It also reports gross income from livestock operations of \$ [REDACTED] in 2014, and \$ [REDACTED] in 2015.
12. Petitioner claimed a self-employed health insurance deduction for 2014 and 2015, connected with the livestock operation.
13. On August 12, 2016, the Department issued a Health Care Coverage Determination Notice (Exhibit 1 Pages 31-33) denying the application for LTC because the value of his countable assets was found to be higher than allowed for the program. That Notice does not, however, identify the assets that were found to exceed the limits.
14. On August 31, 2016, the Department received Petitioner's hearing request, protesting the denial of LTC benefits.
15. Petitioner is currently staying in LTC and there was no evidence offered that he is likely to return home.

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.

In this case, the Petitioner's application for LTC benefits was denied because the Department determined he had assets that exceed the allowable limits for eligibility.

The asset limit for SSI-related MA categories (which include LTC) is \$ [REDACTED] for an asset group of one, and \$ [REDACTED] for an asset group of two. See BEM 400 (7/1/16) p. 8. An asset is unavailable if all of the following are true and an owner cannot sell or spend his share of an asset:

- Without another owner's consent.
- The other owner is not in the asset group.
- The other owner refuses consent.

If property is owned jointly, it is only excludable if it creates a hardship for the other owners. BEM 400, p. 11. When property is owned as “joint tenancy with right of survivorship”, no owner can sell the property unless all owners agree. When real property (real estate) is jointly owned, the Department is to count the individual’s share unless sale of the property would cause undue hardship. Undue hardship is defined in BEM 400, p. 12 as: “a co-owner uses the property as his or her principal place of residence and they would have to move if the property were sold and there is no other readily available housing.”

“Real property” is defined in BEM 400, p. 30, as “land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property.” A homestead is defined (BEM 400, p. 32) as: where a person lives 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).”

There is a section in BEM 400, at pages 32-33, that discusses SSI-Related MA only, that is horribly drafted. Following is the text exactly as it appears in the Manual:

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.

The phrase “When the equity in the client’s homestead exceeds” stands apart from the preceding phrases, and it starts with a capital letter, indicating it is the beginning of a sentence. Further indication that it is an independent sentence from what immediately precedes it is the fact that the words “Home Help” are followed directly by a period. The question is, does that phrase represent a continuation of “MA will not pay the client’s cost for . . .”, or is it an introductory phrase to “Exclude the asset group’s homestead”? All three sentences are aligned at the same margin on the page. Arguably, it could be read as: “MA will not pay the client’s cost for LTC services when the equity in the client’s homestead exceeds [REDACTED] starting January 1, 2015.” Or, it could be read as, “When the equity in the client’s homestead exceeds [REDACTED] starting January 1, 2015, exclude the asset group’s homestead.” If the Department intended to deny payment when the homestead had a high value, it should have said, “When the equity in the client’s homestead exceeds the following amounts, MA will not pay the client’s cost for ...” Nonetheless, it is apparent that the intent of the policy is to limit the availability of LTC benefits to people of limited means, and therefore the presumed reading would be that the homestead would be an excluded asset unless the equity exceeds [REDACTED].

Beyond the homestead exclusion, real property (and personal property) can be excluded if they are used in employment. BEM 400, p. 55, lists “Employment Asset Exclusions”. For SSI-Related MA, employment assets are excluded if they are either required by a person’s employer, or if they produce income directly through their use. “Such assets remain excluded when a person is unemployed only if the person intends to return to that type of work.” Particular types of employment assets that are mentioned at p. 54 are:

- Farmland.
- Tools, equipment and machinery.
- Inventory, livestock.
- Savings or checking account used solely for a business.
- The building a business is located in.
- Vehicles used in business such as a farm tractor or delivery truck. It does **not** include vehicles used solely for transportation to and from work.

The evidence submitted by the parties establishes that Petitioner and his wife have been engaged in farming as a source of income. Their home and adjacent land are counted as 100% agricultural land for property tax purposes. Their records reflect that they have been reporting income and expenses associated with farming on their federal tax return through 2015.

The Department's position is that Petitioner is in long-term care and unlikely to return home. The argument is that he is now unemployed, and since he is not likely to return to work, the assets would not be excluded. What makes this situation different from most LTC applications is that Petitioner has been a farmer. He has not been an employee for another business or individual. The question could perhaps be framed as, "When is a farmer no longer in the farming business?" To be a farmer, does he have to be able to walk out to the barn and fire up his tractor? Does he have to be able to carry a bucket of slop out to the pigsty? Or is it enough that he has hired hands or contractors who are capable of caring for his animals and crops?

Michigan is a largely agricultural state. For some interesting facts on farming in Michigan, the reader can go to:

https://www.michfb.com/MI/uploadedFiles/Documents/Ag_Ed_and_Leadership/2016%20Basket%20Poster_11x17_no%20crops.pdf

A graphic from Michigan Farm Bureau notes that there are 52,194 farms in Michigan. The average size of a Michigan farm is 191 acres, and there are 9,900,000 acres of land in Michigan farms. Ninety-five percent of Michigan farms are individually or family-owned. Of the few farms structured as corporations, 99% of those are family-owned and involve multiple generations and family members. The average age of a Michigan farmer is 58. 24,795 Michiganders operate farms as their primary occupation. An additional 52,719 work part-time on farms, while maintaining off-farm jobs. Without question, farming is an activity that is worthy of being protected when the policy allows.

The policy is drafted in a manner that demonstrates a willingness on the part of the Department to exclude assets that can provide a recipient with income. Besides the exclusion for employment assets, there is an exclusion for income-producing real property. See BEM 400, p. 36, which says:

Income-Producing Real Property

SSI-Related MA Only

Exclude up to \$6,000 of equity in income-producing real property if it produces annual countable income equal to at least 6 percent of the asset group's equity in the asset. Countable income is total proceeds minus actual operating expenses.

Exception: Use the Employment Asset Exclusions in this item for property used in a business or trade.

To put this exclusion in the context of this case, equity in real property is excluded (up to \$██████) if it produces annual countable income equal to at least 6% of the asset group's

equity in the asset. Petitioner's equity in the rental property at [REDACTED] is \$ [REDACTED]. In 2015 his rental income was \$ [REDACTED] from which he paid \$ [REDACTED] in mortgage interest and \$ [REDACTED] in taxes, leaving him with \$ [REDACTED] in income.¹ That income is only 3.6% of his equity, and therefore it would not be excluded under the 6%-income exclusion. However, the property is agricultural, with 87% of it taxed as qualified agricultural land. See Petitioner's Exhibit H. "The qualified agricultural property exemption is an exemption from certain local school operating millages for parcels that meet the qualified agricultural property definition." See State Tax Commission Qualified Agricultural Property Exemption Guidelines, issued December 2013.

https://www.michigan.gov/documents/Qualified_Agricultural_Prop_139854_7.pdf

Furthermore, "Under the law, for a residence to be qualified agricultural property, the residence must be occupied by someone who is either employed in or actively involved in the agricultural use on the property and who has not claimed a homeowner's principal residence exemption on other property." According to the Department's Exhibit 1, Pages 11 and 18, Petitioner and his now-deceased wife lived at [REDACTED] before they entered the nursing facility. Looking to Petitioner's Exhibit E, the property at which Petitioner resided is classified as agricultural, with 100% of it receiving the agricultural tax exemption. For their residence to be qualified as 100% agricultural, it has to be "occupied by someone who is either employed in or actively involved in the agricultural use on the property." "The definition of "agricultural use" contained in MCL 324.36101: "Agricultural use" means the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities." It is not necessary that the agricultural use be profitable for it to receive the agricultural exemption. "[T]here are no minimum income requirements in the definition of 'qualified agricultural property'. Even relatively unproductive or unprofitable parcels can be entitled to the qualified agricultural property exemption."

The State Tax Commission has interpreted the criteria for property to be eligible for the agricultural exemption. For a property to be exempt, it must be used for agricultural purposes. For a residence on an agricultural property to be exempt, it must be occupied by someone either employed in or actively involved in the agricultural use of the property. Because the Petitioner has been granted an agricultural exemption for his property, there has been a determination that he is actively involved in the agricultural use of the property where he has resided. That property was granted a 100% agricultural exemption in 2015, as well as in 2016, after Petitioner and his wife had both entered the nursing home.

¹ Schedule E also shows a deduction of \$ [REDACTED] for depletion/depreciation, but because that is not an out-of-pocket expense that reduces income, it is not considered in determining countable income.

MCL 400.112g is captioned, "Michigan medicaid estate recovery program; establishment and operation by department of community health; development of voluntary estate preservation program; report; establishment of estate recovery program; waivers and approvals; duties of department; lien". The Department of Community Health (DCH) is to establish the Medicaid estate recovery program. The DCH is required to apply for waivers and approvals from the appropriate federal agencies, and to seek approval regarding, "An exemption for the portion of an estate that is the primary income-producing asset of survivors, including, but not limited to, a family farm or business." Whether the farmland here is "the primary income-producing asset of survivors" is not a fact to be determined here, but it is indicative of a desire on the part of the legislature that family-operated farms and businesses will not be forced to liquidate in order to pay for LTC.

The Department submitted as evidence a list of assets (Exhibit 1 Page 34) that it counted in denying Petitioner's application. The list included \$ [REDACTED] in liquid assets, \$ [REDACTED] in real estate, and \$ [REDACTED] in vehicles. As explained above, the vehicles were all considered "farm vehicles" on the tax returns. Because those are farm vehicles and used in the farming operation, they should not have been counted as assets in determining his eligibility. When those are excluded, Petitioner did not exceed the asset limit of \$ [REDACTED] for an individual, or \$ [REDACTED] for a couple.

Even though the asset list did not include real estate values, the Department stated during the hearing that the property values were another reason that Petitioner exceeded the asset limit. Because the "homestead" equity exceeds \$ [REDACTED] the Department believes Petitioner is not eligible for LTC benefits. That ignores the employment exemption which makes the "homestead" exempt from the countable assets.

The evidence establishes that Petitioner was, at the time of the application and subsequently, using his property for agricultural purposes – even that portion that includes his homestead. He has reported farming as his occupation in the available tax returns, including the year during which he applied for LTC benefits. The farmland was being actively used "in a business or trade" and therefore is excluded as a countable asset.

The small parcel known by tax id # [REDACTED] must be considered. That parcel is zoned as Ag-1, which is presumably an agricultural zoning. However, it is in a property class of "residential". See Petitioner's Exhibit G and Respondent's Exhibit 1, Pages 76-82. It was also given a 100% principal residence exemption in 2015 and 2016, and given a final SEV in 2015 of \$ [REDACTED]. For 2016 it was given an SEV of \$ [REDACTED]. The tax records show no land improvements. There is no evidence that this parcel is jointly owned by Petitioner and any third party. In Petitioner's Assets Declaration (Exhibit 1 Page 9) this parcel is described as "farmland", yet there is nothing in the assessor's records to show that the agricultural exception has been granted. It is in an agricultural district, but it is claimed as a homestead. The property was owned jointly by Petitioner

and his wife, who lived at [REDACTED]. According to the property listing (Exhibit 1 Page 81), this property is located at [REDACTED]. It is farmland, primarily utilized for crops, with no perc test. It was listed for sale for \$ [REDACTED] on September 15, 2015. Considering the fact that the Asset Declaration identifies the homestead as valued at \$ [REDACTED] and then gives a value of farmland (tax id # [REDACTED]) at \$ [REDACTED] based upon the evidence that was provided, it is hard to reconcile how that smaller parcel qualified for 100% principle residence exemption. However, a review of the online equalization records for Allegan shows that this parcel ([REDACTED]) is directly across [REDACTED] from Petitioner's homestead ([REDACTED], merged with [REDACTED]). See the following online tax maps, both accessed October 28, 2016. [REDACTED]

[REDACTED] Because the parcels are contiguous, they qualify for the principal residence exemption. See Michigan Department of Treasury publication 2856, *Guidelines for the Michigan Principal Residence Exemption Program*. Even though the 3.6 acre parcel is across the road from the principal residence, it is considered part of the principal residence for property tax exemption purposes.

In the end, the Department has the burden of establishing by a preponderance of the evidence that it properly applied the policy to Petitioner's application for LTC benefits. According to BEM 400, p. 6, "Asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested." The application was submitted on January 27, 2016, for benefits retroactive to October 2015. In the hearing summary (Respondent's Exhibit 1 Pages 2-3) it says that the application was denied due to excess assets. It first mentions the vehicles, and then it mentions the real estate. However, in the MA Assets report (Exhibit 1 Page 34) it does not list any values for real property. It lists the vehicles and some "liquid" assets. Restating what was explained above, the vehicles are farm vehicles and should not have been counted. Pages 31-33 are the Health Care Coverage Determination Notice dated August 12, 2016, and that notice only states that the "value of your countable assets is higher than allowed for this program" without identifying the assets or their values. Because the MA asset report immediately follows that determination, the implication is that the decision was based upon the assets mentioned in that document. The Department has not established that it counted the value of the real property in reaching its decision to deny the application. The vehicles were improperly counted as assets because they fall within the employment asset exclusion. The Department must be reversed.

Lest there be any confusion, this Decision only finds that the Department did not act in compliance with policy by denying the application based upon a finding that the vehicles exceeded the asset limit. The Department's Health Care Coverage Determination Notice and MA Asset list (Pages 31-34) do not identify any excess assets other than the vehicles and \$ [REDACTED] in liquid assets. The discussion *supra* regarding the real property is dicta, because the evidence indicates the real property was not identified as exceeding

the asset limit. The discussion is offered to help the parties analyze the impact the real estate – and their values – might have upon Petitioner’s eligibility for LTC.

DECISION AND ORDER

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner’s application for LTC MA after finding his vehicles exceeded the asset limit.

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:

1. Redetermine Petitioner’s eligibility for LTC MA based upon the assets that were properly countable as available assets during the month of October, 2015.
2. Provide LTC MA benefits to Petitioner if he is found to be eligible.

DJ/mc



Darryl Johnson
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]

Counsel for Respondent

[REDACTED]

Petitioner

[REDACTED]

Counsel for Petitioner

[REDACTED]