



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
Date Mailed: December 19, 2016
MAHS Docket No.: 16-015221
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 November 17, 2016, from Lansing, Michigan. The Petitioner was represented by her [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED] [REDACTED] [REDACTED], [REDACTED], Long Term Care Specialist, and [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly determine the Petitioner's eligibility for Medicaid (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. On August 12, 2016, the Petitioner was admitted to a nursing home.
2. On August 30, 2016, the Petitioner through her Attorney applied for MA by completing a DHS 4576, Medicaid Application Patient of Nursing Facility, with a written verification of income, assets and expenses.
3. On August 30, 2016, the Department received a MSA-2565, Facility Admission Notice, via email from [REDACTED].

4. On September 15, 2016, the Department sent the Petitioner and her Attorney a Health Care Coverage Determination Notice, DHS 1606, that the Petitioner was not eligible for MA due to excess assets. Department Exhibit 1, pgs. 14-18.
5. On October 3, 2016, the Department received a hearing request from the Petitioner and her Attorney, contesting the Department's negative action.

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 was admitted to a nursing home on August 12, 2016. On August 30, 2016, the Petitioner, through her Attorney, applied for MA by completing a DHS 4576, Medicaid Application Patient of Nursing Facility, with a written verification of income, assets and expenses. On August 30, 2016, the Department received a MSA-2565, Facility Admission Notice, via email from [REDACTED] [REDACTED]. On September 15, 2016, the Department sent the Petitioner and her Attorney a Health Care Coverage Determination Notice, DHS 1606, that the Petitioner was not eligible for MA due to excess assets. Department Exhibit 1, pgs. 14-18. On October 3, 2016, the Department received a hearing request from the Petitioner and her Attorney, contesting the Department's negative action. BEM 400. ERM 205.

BEM 211, pg. 5

RULES FOR GROUPS

SSI-Related MA, Group 2 Pregnant Women, Group 2 Persons Under Age 21, Group 2 Caretaker Relative

Determine the fiscal and asset groups separately for each person requesting MA. When referring to the group listings, remember:

Only persons living with one another can be in the same group; see LIVING WITH.

BEM 400, pg. 36

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.

FAP Only

Exclude rental and vacation properties owned by the group if they are renting it to produce income.

Note: Time-share properties are excluded.

BEM 400, pg. 55

EMPLOYMENT ASSET EXCLUSIONS

General Employment Exclusion

SSI-Related MA Only and FAP

Exclude employment assets (see above) that:

- Are required by a person's employer.
- 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.

Exception: For FAP, exclude assets essential to self-employment farming for one year after the person quits the farming activity, even if they have no intent to resume.

During the hearing, the Department stated that the Petitioner was the owner of two properties of her homestead and another property that is not contiguous. The contested property, parcel # [REDACTED], is owned by the Petitioner, $\frac{1}{2}$, her son, $\frac{1}{4}$, and her daughter-in-law, $\frac{1}{4}$. Department Exhibit 1, pgs. 35-42. The property is farmland and no one lives on it. The Petitioner's son and his wife farm the property and keep all the income derived from their farming. The Petitioner does not receive any income from their efforts. The son and the daughter-in-law are not part of the Petitioner's fiscal

group per BEM 211. The SEV of the property is [REDACTED] which makes the value of the land [REDACTED]. The Petitioner owns ½ of the property, which results in a value of [REDACTED] for the property. As a result, the Petitioner had excess assets for MA because of the [REDACTED] asset limit. Department Exhibit 1, pg. 21.

The Petitioner's Attorney argued that the property should be exempt because of the employment related income and the maintenance of a family farm. However, the Petitioner is not farming the property. Her son and daughter-in-law are the farmers that are working the land, not her. The Petitioner's son and daughter-in-law are not part of her fiscal group. For MA purposes, she is a group of one. The Petitioner's son and daughter-in-law nor their income are counted as a part of the Petitioner's determination of MA. In addition, the Petitioner is not receiving any income from the property. This Administrative Law Judge finds that contested property is a countable asset for MA and the Petitioner has excess assets for MA.

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 acted in accordance with Department policy when it determined that the contested property was a countable asset and the Petitioner had excess assets for MA.

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



Carmen G. Fahie

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

[REDACTED]

[REDACTED]
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