



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: March 6, 2017  
MAHS Docket No.: 16-019488  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

### 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 three-way telephone hearing was held on February 15, 2017, from Lansing, Michigan. Attorney [REDACTED] ( [REDACTED] ) appeared on behalf of Petitioner. Assistant Attorney General (AAG) [REDACTED] ( [REDACTED] ) appeared on behalf of the Department of Health and Human Services (Department). [REDACTED] [REDACTED] Eligibility Specialist, testified as a witness for the Department.

The Department offered the following exhibits which were marked and admitted into evidence: [**Department's Exhibit 1:** Hearing Summary (page 1), Request for Hearing (pages 2-4), Email from Petitioner's Attorney's assistant to DHHS (page 5), Shipping Label (page 6), Department notes (page 7), Authorization to Release Information (page 8), General Durable Power of Attorney (pages 9-35), LTC Medicaid Application (pages 36-39), Attachment to Medicaid Application (pages 40-41), Quit Claim Deed (pages 42-46), Warranty Deed (page 47), 2016 Summer Property Tax Assessment (page 48), Lease Agreement (page 49), Health Care Coverage Determination Notice (pages 50-52), BEM 400 (pages 53-54), Trust/Annuity Evaluation (pages 55-56), and Petitioner's Trust documents (pages 57-81). **Department's Exhibit 2:** Respondent's Brief/Summary (pages 82-90)].

Petitioner offered the following exhibits which were admitted into evidence: [**Petitioner's Exhibit A:** Petitioner's Brief/Summary (pages 1-6)].

The record closed at the conclusion of the hearing.

**ISSUE**

Did the Department properly deny Petitioner's application for Long Term Care (LTC) Medical Assistance (MA) or "Medicaid" because she exceeded the asset limit?

**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 December 19, 2007, Petitioner executed a General Durable Power of Attorney (POA), appointing her daughter as Attorney-in-Fact. [Department's Exhibit 1, pp. 9-35].
2. Petitioner entered a LTC nursing facility on November 20, 2015. [Dept. Exh. 1, p. 36].
3. On November 28, 2016, the Department received an application for LTC-Medicaid benefits (DHS-4574) completed by Petitioner's daughter/Attorney-in-Fact. The application indicated, among other things, that Petitioner: (1) was 93 years-old (DOB: ██████████); (2) owned farmland; (3) had trust funds in the amount of \$██████████ (4) had a checking account balance of \$██████████ (5) received \$██████████ per month from social security (RSDI); and (6) had income from an annuity in the amount of \$██████████ [Dept. Exh. 1, pp. 36-39].
4. At the time of application, Petitioner owned approximately 117 acres of farmland located in ██████████ Michigan. The SEV value of the farm was approximately \$██████████ Petitioner leased the farm which yielded \$██████████ in annual income. [Dept. Exh. 1, pp. 40-41].
5. The Department local office forwarded the Trust to the Office of Legal Services/Trust and Annuities Unit for evaluation. [Dept. Exh. 1, pp. 55-56].
6. On December 15, 2016, the Department mailed Petitioner a Health Care Coverage Determination Notice (DHS-1606), which indicated that, effective November 1, 2016, Petitioner was not eligible for LTC-MA benefits because she exceeded the asset limits as her farmland was considered an asset and was not excluded under the employment asset exclusion because Petitioner is not returning to work the farm. [Dept. Exh. 1, pp. 50-52].
7. On December 22, 2016, the Office of Legal Affairs Trust and Annuities Unit sent the Department local office a Trust/Annuity Evaluation which indicated that the Trust was a Medicaid Trust as defined in BEM 401, page 5 and was an Irrevocable Trust pursuant to BEM 401, pages 11-12. [Dept. Exh. 1, pp. 55-56].
8. On December 27, 2016, the Department received a Request for Hearing completed by Petitioner's daughter/Attorney-in-Fact. [Dept. Exh. 1, pp. 2-3].

## 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.

Medical Assistance (MA) is also referred to as "Medicaid." BEM 105 (10-1-2016), p. 1. The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. BEM 105, p. 1.

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 the instant matter, Petitioner requested a hearing because the Department denied her application for LTC-Medicaid benefits. The Department contends that Petitioner was not eligible because the value of her farmland exceeded the allowable asset limit. Petitioner counters by stating that the farmland should be excluded as an employment asset under department policy.

Assets must be considered in determining eligibility for SSI-related MA categories. BEM 400 (7-1-2016), p. 1.<sup>1</sup> Real property is considered an asset. BEM 400, p. 1. Countable assets **cannot** exceed the applicable asset limit. An asset is countable if it meets the availability tests and is **not** excluded. BEM 400, p. 2. [Emphasis in original]. An asset must be available to be countable. **Available** means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p. 9. [Emphasis in original].

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<sup>1</sup> This was applicable policy at the time the Department sent the Health Care Coverage Determination Notice on December 15, 2016. BEM 400 was updated on January 1, 2017, but the correct policy language that was in effect at the time of the Department's determination was July 1, 2016.

Asset eligibility is required for SSI-related MA categories. BEM 400, p. 6. For all other SSI-related MA categories, the asset limit is \$2,000 for an asset group of one and \$3,000 for an asset group of two. BEM 400, p. 8.

BEM 400 identifies income-producing real property exclusions. For SSI-related MA, the Department may 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. BEM 400, p. 36. [Emphasis in original].

Employment assets are those assets commonly used in a business, a trade or other employment. Examples:

- 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.

See BEM 400, p. 54. [Emphasis added].

BEM 400, page 55 allows a general employment exclusion, which indicates that the Department will 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. BEM 400, p. 55. [Emphasis added].

Here, Petitioner argues that her farmland property is an employment asset and should be excluded according to BEM 400, p. 55. Petitioner contends that she is in the business of renting/leasing her farmland property to a third party and that she receives \$ [REDACTED] per year in rental income. [Pet. Brf., p. 2]. Petitioner states that she "intends to return to the work of running/overseeing the Farmland." [Petitioner's Brief/Summary, p. 1]. Petitioner contends that there is no requirement in policy that she be physically situated on the farmland in order for the exclusion to apply. [Pet. Brf, p. 1].

The Department, on the other hand, takes the position that Petitioner holds considerable wealth and is not asset eligible for LTC-Medicaid benefits. [Dept. Brf, p. 1]. Specifically, the Department argues that Petitioner cannot use the employment

asset exclusion because she does not actively “farm” the land and is not otherwise employed with any farming activity on the property. [Dept. Brf., p. 1].

The first question to be answered here is whether Petitioner’s farmland can fairly be considered an employment asset. BEM 400, p. 54 provides that “[e]mployment assets are those assets commonly used in a business, a trade or other employment.” Then, the policy identifies farmland as an example of an employment asset. However, this does not necessarily mean that all farmlands are employment assets. In order for farmland to be considered an employment asset, BEM 400, p. 54 provides that the asset must be “commonly used in a business, trade or other employment.” Here, there is no question that farmlands are commonly used in the business of farming. However, the policy indicates that the individual asset must be assessed. Here, there is no question that Petitioner, who was 93 years old at the time of application, was not in the actual physical business of farming nor was she employed in any type of farming business. She leased her property to a third party, who presumably used the property for farming, but there is no evidence in this record that Petitioner had any involvement in any type of day-to-day farming operations. [Dept. Exh. 1, pp. 40-41].

Petitioner contends that BEM 400 does not specifically require that she physically be situated on the farmland in order for the employment asset exclusion to apply. Rather, Petitioner submits, she is employed by “running/overseeing” the receipt of monthly rent payments from her lessee and that it is her ownership of the farmland that is sufficient to meet the employment asset.

This Administrative Law Judge has reviewed the entire record and does not find any testimony or document evidence to show that Petitioner was personally involved in the “running or oversight” of the receipt of rent payments from her farmland property. Petitioner did not testify at the hearing nor did she provide an affidavit or other document evidence in the record to show that she had any involvement in running or overseeing any type of a business. Other than ownership, Petitioner, who had executed a power of attorney in 2007, did not sufficiently describe what she does and how it relates to the farmland. Even if she had been so involved, this Administrative Law Judge does not find that oversight or receipt of rental payments is sufficiently connected with the farmland property asset such that the employment exclusion would be applicable.

BEM 400, page 55 allows a general employment asset exclusion if the asset produces income directly through its use. Here, Petitioner receives income from holding the farmland property, but she does not receive income from its use. It is the third party who is actually farming the land in his business, not the Petitioner, who receives income from the use of the real property asset. There is no evidence in this record that Petitioner, who is 93 year-old and confined to a LTC facility, “uses” this property for income.

In addition, the policy allows the asset to remain excluded when she is unemployed only if she intends to return to that type of work. See BEM 400, p. 55. Here, Petitioner did not

provide any testimony or document evidence in the record to establish that she was ever previously employed in connection with the farmland and that she had any intention to return to work.

Accordingly, this Administrative Law Judge finds that Petitioner's ownership of the farmland and/or receipt of rental payments, does not invoke the employment asset exclusion under BEM 400, pages 54-55. Petitioner's farmland property had a value of \$ [REDACTED] (SEV \$ [REDACTED] x 2) and is a countable asset. [Dept. Exh. 1, pp. 40-41]. Petitioner's farmland asset was well in excess of the \$2,000 asset limit. BEM 400, p. 8. This asset is not excludable under policy as stated above. In addition, the record does not show that Petitioner is within the population of needy persons that the Medicaid program was designed to protect. See *Mackey, supra*.

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 application for LTC-Medicaid benefits due to excess assets.

**DECISION AND ORDER**

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

**IT IS SO ORDERED.**

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**C. Adam Purnell**  
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]

[REDACTED]

**Counsel for Petitioner**

[REDACTED]

**Petitioner**

[REDACTED]