



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: April 26, 2017
MAHS Docket No.: 16-018630
Agency No.: [REDACTED]
Petitioner: [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 February 1, 2017, from Lansing, Michigan. The Petitioner was represented by her Attorney, [REDACTED] with the law firm of [REDACTED]. The Department of Health and Human Services (Department) was represented by Assistant Attorney General, [REDACTED] and [REDACTED] Long Term Care Specialist.

ISSUE

Did the Department properly determine the Petitioner's eligibility for Medicaid (MA) Long Term Care (LTC)?

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 September 23, 2016, the Department received an Affidavit from [REDACTED] Realtor from [REDACTED], which was dated September 22, 2016 about the difficulties of selling, dividing or changing the ownership of the property in question. Department Exhibit 1, pages 31-32.

3. On October 12, 2016, the Petitioner listed her ½ ownership of the contested property for sale \$ [REDACTED] through [REDACTED] with a listing end date of April 12, 2017. Department Exhibit 1, pgs. 25-30.
4. On October 31, 2016, the Department received a letter from [REDACTED], Broker/Owner from [REDACTED] signed October 24, 2016, stating that the ½ ownership in the contested property is valued at no higher than the DHHS value of \$ [REDACTED]. In addition, the property is not marketable because it is only 50% of the parcel resulting in the property being considered unsaleable. Department Exhibit 1, pg. 24.
5. On October 31, 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. Department Exhibit 1, pg. 58-64.
6. On November 14, 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. 113-14.
7. On December 6, 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 September 23, 2016, the Department received an Affidavit from [REDACTED], Realtor from [REDACTED], which was dated September 22, 2016 about the difficulties of selling, dividing or changing the ownership of the property in question. Department Exhibit 1, pages 31-32. On October 12, 2016, the Petitioner listed her ½ ownership of the contested property for sale \$ [REDACTED] through [REDACTED]. Together with a listing end date of April 12, 2017. Department Exhibit 1, pgs. 25-30. On October 31, 2016, the Department received a letter from [REDACTED], Broker/Owner from [REDACTED].

████████ signed October 24, 2016, stating that the ½ ownership in the contested property is valued at no higher than the DHHS value of \$████████. In addition, the property is not marketable because it is only 50% of the parcel resulting in the property being considered unsaleable. Department Exhibit 1, pg. 24.

On October 31, 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. Department Exhibit 1, pg. 58-64. On November 14, 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. 113-14. On December 6, 2016, the Department received a hearing request from the Petitioner and her Attorney, contesting the Department's negative action. BEM 400. ERM 205.

BEM 400, pgs. 11-13.

JOINTLY OWNED ASSETS

FIP, SDA, G2U, G2C, RMA, SSI-Related MA Only, CDC and FAP

Jointly owned assets are assets that have more than one owner.

FIP, SDA, G2U, G2C, RMA, SSI-Related MA Only and CDC

Jointly owned real property is only excludable if it creates a hardship for the other owners.

Note: In SSI-related MA a divestment has occurred if joint owners are added during the five year look back period. See BEM 405, MA DIVESTMENT for determination of a divestment penalty.

Ownership documents for jointly owned real property commonly use one of four phrases:

- **Joint Tenancy:** no owner can sell unless all owners agree.
- **Joint Tenancy with Right of Survivorship:** no owner can sell unless all owners agree.

- **Tenancy by the Entirety:** same as joint tenancy except the owners are husband and wife. Neither owner can sell unless both owners agree.
- **Tenancy-in-Common:** each owner can sell their share without the other owner's agreement.

Note: For jointly owned real property count the individual's share unless sale of the property would cause undue hardship. Undue hardship for this item is defined 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.

BEM 400, pgs. 14-15.

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 actual sale 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 actual sale 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.

During the hearing, the Department stated that the contested property had not been for sale for 90 days prior to application as required by policy. The property was listed for sale with [REDACTED] effective October 12, 2016, which was not 90 days before the application filed on October 31, 2016. As a result, the Department properly denied the Petitioner's application because the property had not been available for sale for 90 days prior to application as required by policy.

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 Petitioner had excess assets for MA because the property was not listed for sale for 90 days before application.

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



CF/nr

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

Counsel for Respondent

[REDACTED]

DHHS

[REDACTED]

Counsel for Respondent

[REDACTED]

Petitioner

[REDACTED]

Counsel for Petitioner

[REDACTED]