



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: May 8, 2017  
MAHS Docket No.: 16-019041  
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] Petitioner's son who is her guardian and conservator, [REDACTED] and Petitioner's son, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist, and Assistant Attorney General [REDACTED].

**ISSUE**

Did the Department properly deny the Petitioner's application for Medicaid (MA) Long Term Care (LTC) due to excess assets?

**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 [REDACTED], the Petitioner was admitted to a nursing home. Department Exhibit A2, pgs. 6.
2. The Petitioner is the owner of a non-homestead property with a countable fair market value of \$ [REDACTED] of SEV of \$ [REDACTED] times 2 with a mortgage payoff of \$ [REDACTED] as of September 20, 2016 resulting in equity of \$ [REDACTED] with a monthly mortgage payment of \$ [REDACTED] annual property taxes of \$ [REDACTED] and

annual homeowner's insurance of \$ [REDACTED] Department Exhibit A2, pg. 26, 42-46, and 49.

3. On September 30, 2016, the Petitioner applied for MA LTC. Department Exhibit A2, pgs. 6-54.
4. On September 30, 2016, the Petitioner entered into a lease agreement with her son, who rented the property for \$ [REDACTED] a month for a term of 4 months. Department Exhibit A2, pgs. 13-21.
5. On November 1, 2016, the Department Caseworker determined that the Petitioner had excess assets for MA of a non-homestead property because the amount of the rent is less than the amount needed to meet the definition of an income producing property for the exclusion as an asset. As a result, the non-homestead property is a countable asset until it has been actively for sale for 90 days as required by policy. Department Exhibit A2, pgs. 55-58.
6. On November 10, 2016, the Department Caseworker sent the Petitioner a notice that she was denied for MA due to excess assets due to her countable assets were higher than allowed for this program effective September 1, 2016 ongoing per BEM 400 and ERM 205. Department Exhibit A2, pgs. 61-64.
7. On December 27, 2016, the Department received a hearing request from the Petitioner, 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 [REDACTED]. Department Exhibit A2, pgs. 6. The Petitioner is the owner of a non-homestead property with a countable fair market value of \$ [REDACTED] of SEV of \$ [REDACTED] times 2 with a mortgage payoff of \$ [REDACTED] as of September 20, 2016 resulting in equity of \$ [REDACTED] with a monthly mortgage payment of \$ [REDACTED] annual property taxes of

\$ [REDACTED], and annual homeowner's insurance of \$ [REDACTED]. Department Exhibit A2, pg. 26, 42-46, and 49.

On September 30, 2016, the Petitioner applied for MA LTC. Department Exhibit A2, pgs. 6-54. On September 30, 2016, the Petitioner entered into a lease agreement with her son, who rented the property for \$ [REDACTED] a month for a term of 4 months. Department Exhibit A2, pgs. 13-21. On November 1, 2016, the Department Caseworker determined that the Petitioner had excess assets for MA of a non-homestead property because the amount of the rent is less than the amount needed to meet the definition of an income producing property for the exclusion as an asset. As a result, the non-homestead property is a countable asset until it has been actively for sale for 90 days as required by policy. Department Exhibit A2, pgs. 55-58. On November 10, 2016, the Department Caseworker sent the Petitioner a notice that she was denied for MA due to excess assets due to her countable assets were higher than allowed for this program effective September 1, 2016 ongoing per BEM 400 and ERM 205. Department Exhibit A2, pgs. 61-64. On December 27, 2016, the Department received a hearing request from the Petitioner, contesting the Department's negative action. BEM 400.

### **BEM 400, pages 6-7**

### **MA ASSET ELIGIBILITY**

#### **G2U, G2C, RMA, and SSI-Related MA Only**

Asset eligibility is required for G2U, G2C, RMA, and SSI-related MA categories.

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.

At **application**, do not authorize MA for future months if the person has excess assets on the processing date.

If an **ongoing** MA recipient or active deductible client has excess assets, initiate closure. However, delete the pending negative action if it is verified that the excess assets were disposed of. Payment of medical expenses, living costs and other debts are examples of ways to dispose of excess assets without divestment. LTC and waiver patients will be penalized for divestment; see BEM 405, MA DIVESTMENT.

**BEM 400, Pages 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.

BEM 400, page 38

**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.

**Note:** Time-share properties are excluded.

During the hearing, the Petitioner's Attorney argued that he had made a mistake in the calculations in order to get the deduction as an income producing real property. He calculated the homeowner's insurance as a yearly amount of \$ [REDACTED] instead of a monthly amount of \$ [REDACTED] for a yearly amount of [REDACTED]. As a result, the Petitioner did not qualify for the income producing real property deduction. The Petitioner's Attorney felt that the Department should accept his attempt to fix the mistake by the Petitioner's son paying another \$ [REDACTED] on January 30, 2017 and an amended lease agreement signed on January 30, 2017. Petitioner's Exhibit 1, pgs. 9-20.

In comparison, the Assistant Attorney General argued that it would have been divestment by the Petitioner's son only renting the non-homestead property for the minimum required to obtain the income producing real property deduction of a 4 month rent for only [REDACTED] a month, which may have been less than the fair market value of the non-homestead property. However, since the non-homestead property did not qualify for the income producing real property deduction, then the Department properly denied the Petitioner's MA application due to excess assets on November 10, 2016 based on a September 30, 2016 application.

**BAM 115, page 25.**

**Subsequent  
Processing**

***On or before the 30th day:***

- Re-register the application, using the **original** application date.
- If the client is eligible, determine whether to prorate benefits according to initial benefits policy in this item.

***Between the 31st and 60th days:***

- Re-register the application, using the date the client **completed** the process.
- If the client is eligible, prorate benefits from the date the client complied.

This Administrative Law Judge finds this is not a correctable error because the attempt to amend was made on January 30, 2017, which is more than 30 and 60 days from the application date of September 30, 2016. A new application is required to be filed because of the length of time of the application filed and the attempt to correct a mistake on January 30, 2017.

In addition, any attempt to rent the non-homestead real property for less than fair market value is divestment as defined in Department policy found in BEM 405, page 1. There was no written documentation provided by the Petitioner's Attorney as to what the fair market rent of the non-homestead property was. Instead, the Petitioner's Attorney was trying to pay the minimum in order to qualify for the income producing real property deduction. Transfers for less than fair market value are presumed to be for eligibility purposes unless/until the client provides convincing evidence that they had no reason to believe long-term care (or waiver services) might be needed. In this case, the Petitioner was admitted into a nursing home on [REDACTED], so long term care services are needed.

BEM 405, page 1.

**DEPARTMENT  
POLICY**

**Medicaid (MA) ONLY**

Divestment results in a penalty period in MA, **not** ineligibility. Divestment policy does **not** apply to Qualified Disabled Working Individuals (QDWI); see Bridges Eligibility Manual 169.

Divestment is a type of transfer of a resource and not an amount of resources transferred.

Divestment means a transfer of a resource (see RESOURCE DEFINED below and in glossary) by a client or his spouse that are all of the following:

- Is within a specified time; see LOOK-BACK PERIOD in this item.

- Is a transfer for LESS THAN FAIR MARKET VALUE; see definition in glossary.
- Is not listed below under TRANSFERS THAT ARE NOT DIVESTMENT

**Note:** See Annuity Not Actuarially Sound and Joint Owners and Transfers in this item and BEM 401 about special transactions considered transfers for less than fair market value.

During the penalty period, MA will **not** pay the client's cost for:

- Long Term Care (LTC) services.
- Home and community-based services.
- Home help.
- Home health.

MA will pay for other MA-covered services.

## BEM 405, page 12

### Transfers for Another Purpose

As explained below, transfers exclusively for a purpose other than to qualify or remain eligible for MA are **not** divestment.

Assume transfers for less than fair market value were for eligibility purposes until the client or spouse provides convincing evidence that they had no reason to believe LTC or waiver services might be needed.

**Example:** Mr. Smith, age 40, was in good health when he gave his vacation cottage to his nephew. The next day Mr. Smith was in an automobile accident. His injuries require long-term care. The transfer was **not** divestment because Mr. Smith could **not** anticipate his need for LTC services.

#### ***Exception:***

- Preservation of an estate for heirs or to avoid probate court is **not** acceptable as another purpose.
- That the asset or income is **not** counted for Medicaid does **not** make its transfer for another purpose.

As a result, this Administrative Law Judge finds that the Petitioner had excess assets for MA eligibility because the non-homestead real property did not meet the requirements for the deduction for the income producing real property.

**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 eligibility.

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



CF/nr

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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]

**Counsel for Respondent**

[REDACTED]

**DHHS**

[REDACTED]

**Counsel for Petitioner**

[REDACTED]

**Petitioner**

[REDACTED]