



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]

Date Mailed: July 28, 2017

MAHS Docket No.: [REDACTED]

17-006047

Agency No.: [REDACTED]

Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 [REDACTED], from Detroit, Michigan. Petitioner did not appear and was represented by his attorney, [REDACTED]. [REDACTED] testified on behalf of Petitioner. [REDACTED] of the Office of Attorney General appeared as counsel for the Michigan Department of Health and Human Services (MDHHS). [REDACTED], specialist, testified on behalf of MDHHS.

ISSUE

The issue is whether MDHHS properly denied Petitioner's application for 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. On [REDACTED], Petitioner applied for Long Term Care (LTC) coverage (see Exhibit 1, pp. 3-6)
2. Petitioner was the owner of two adjoining land parcels which included Petitioner's homestead.
3. One of the adjoining parcels had a state equalized value (SEV) of [REDACTED] (see Exhibit 1, pp. 41-42).

4. On [REDACTED], MDHHS determined Petitioner was ineligible for MA benefits, effective [REDACTED], in part, based on [REDACTED] in real property assets.
5. On [REDACTED], Petitioner's attorney requested a hearing to dispute to the denial of MA benefits.

CONCLUSIONS OF LAW

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. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a denial of an application for LTC-MA coverage. MDHHS presented a Health Care Coverage Determination Notice (Exhibit 1, pp. 66-69) dated [REDACTED]. The notice informed Petitioner of a denial of MA benefits due to excess assets.

Assets must be considered in determining eligibility for... SSI-related MA categories... BEM 400 (January 2017), p. 1. The SSI-Related MA asset limit [for a group size of 1] is \$2,000. *Id.*, p. 8. All types of assets are considered for SSI-related MA categories. *Id.*, p. 2.

MDHHS presented an asset budget (Exhibit 1, p. 58). The budget calculated Petitioner's real property assets to be [REDACTED].

Assets refers to cash, personal property or real property (see *Id.*). Real property is land and objects affixed to the land such as buildings, trees and fences. *Id.*, p. 30.

It was not disputed that Petitioner's owned two parcels of land. It was not disputed that the parcels adjoined. It was not disputed that Petitioner lived in a home on one of the parcels. It was not disputed that a second parcel also contained a home. It was not disputed that the second parcel had an SEV of [REDACTED] MDHHS testimony credibly indicated Petitioner's real property assets were calculated by doubling the SEV of Petitioner's second parcel.

Petitioner's attorney's only dispute was whether MDHHS should have factored the second tax parcel as a countable asset. Petitioner's attorney contended that the second parcel is exempt as an asset because it is adjoined to Petitioner's homestead.

[For SSI-related MA, MDHHS is to generally] exclude the asset group's homestead. *Id.*, p. 33. Exceptions to exemptions exist when the value of the homestead exceeds various amounts (none of which were alleged to be applicable).

A homestead is where a person lives... that they own, is buying or holds through a life estate or life lease. *Id.*, p. 32. It includes the home, all adjoining land and any other buildings on the land. *Id.* Adjoining land means land which is not completely separated from the home by land owned by someone else. *Id.* Adjoining land may be separated by rivers, easements and public rights-of-way (example: utility lines and roads). *Id.*

BEM unequivocally defines all land adjoined to a homestead as part of a homestead. MDHHS policy unequivocally allows a homestead to include “other buildings” on the land. It was not disputed that Petitioner’s properties adjoined. Thus, MDHHS appears to have improperly factored Petitioner’s second parcel as a countable asset. MDHHS contended that the Bridges Program Glossary (BPG) provides further insight.

[A homestead is] the residence that a person owns (or is buying) where they usually live. BPG (October 2015), p. 32. The homestead includes all adjoining property, any other buildings on the property, but does not include other residences on the property. *Id.*

It is questionable whether BPG is a proper source for MDHHS policy. Generally, BAM and BEM are the only sources of MDHHS policy. BPG may be an appropriate source of clarification when BAM or BEM is vague. In the present case, BEM appears to be clear that residences on land adjoining a homestead is part of a homestead. This consideration is supportive in rejecting the MDHHS contention that Petitioner’s second tax parcel is a countable asset.

Even if BPG was considered valid policy, the “homestead” definition found in BPG is interpreted as a conflict to the clear policy written in BEM. Generally, when interpreting conflicting rules, the conflict will be resolved by an unfavorable interpretation against the drafter. This consideration is also supportive in finding that MDHHS improperly factored Petitioner’s second parcel of land as a countable asset.

Petitioner’s attorney presented evidence that Petitioner’s second parcel contained a home that was uninhabitable. A letter from a county health department (see Exhibit 1, p. 113) and various photographs (Exhibit A, pp. 9-24) were supportive in finding that Petitioner was not likely to reside at the second parcel. Such a conclusion may be relevant if BPG’s definition of homestead was controlling; it is found to not be controlling.

It is found that BEM is controlling policy in defining “homestead.” The definition of “homestead” is found to exempt all properties (and buildings) adjoining Petitioner’s undisputed homestead. Thus, MDHHS should have exempted both of Petitioner’s tax parcels as countable assets. Accordingly, it is found that MDHHS improperly

determined Petitioner's MA eligibility by factoring Petitioner's second parcel as a countable asset.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's MA eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reregister Petitioner's LTC application dated [REDACTED]; and
- (2) Process Petitioner's application subject to the finding that Petitioner's second tax parcel is part of Petitioner's homestead.

The actions taken by MDHHS are **REVERSED**.

CG/hw



Christian Gardocki

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]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED])

DHHS

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Counsel for Petitioner

[REDACTED]
[REDACTED]
[REDACTED]