



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: January 18, 2018  
MAHS Docket No.: 17-015070  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Aaron McClintic

### **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; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, an in-person hearing was held on December 19, 2017, from [REDACTED] Michigan. Petitioner was represented by attorney [REDACTED]. [REDACTED] appeared as a witness and testified for Petitioner. The Department of Health and Human Services (Department) was represented by Assistant Attorney General [REDACTED] who appeared by telephone. [REDACTED], Long Term Care Eligibility Specialist, appeared and testified for the Department. Department Exhibit 1, pp. 1-51 was received and admitted without objection.

### **ISSUE**

Did the Department properly determine that Petitioner was over the Medical Assistance (MA) 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 November 8, 2017, a Health Care Coverage Determination Notice was sent to Petitioner informing him that he was no longer eligible for MA effective December 1, 2017, because the value of his countable assets was higher than allowed for the program. (Ex.1, pp. 38-41)
2. On November 16, 2017, Petitioner requested hearing contesting the closure of MA.

3. Petitioner owns real property at [REDACTED] that is excluded as his homestead.
4. Petitioner jointly owns real property located at [REDACTED]. The joint owners are Petitioner's daughter, [REDACTED], and her husband [REDACTED].
5. The Department determined that the asset value in the jointly owned real property for Petitioner was \$ [REDACTED] based on the State Equalized Value, the outstanding mortgage and Petitioner's age.

### **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.

#### **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.

**Note:** For Freedom To Work determinations, jointly owned assets are considered to belong to the initial person.

An asset is unavailable if all of the following are true and an owner **cannot** sell or spend his share of an asset:

- Without another owner's consent.
- The other owner is not in the asset group.
- The other owner refuses consent. BEM 400, p.11 (July 2017)

Jointly owned real property is only excludable if it creates a hardship for the other owners. 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, p. 12

In this case, Petitioner owns a home jointly with his daughter [REDACTED] and her husband located at [REDACTED]. [REDACTED] and her husband have resided at the property for approximately 20 years. Petitioner's contention is that Petitioner's daughter and her husband are joint owners and do not consent to the sale of the property. (Ex. 1, p.34) Petitioner further contends that it would be an undue hardship for Petitioner's daughter and her husband to sell the property because they would not be able to obtain comparable housing due to their poor credit history and difficult financial circumstances. Petitioner's daughter credibly testified that her husband receives social security benefits based on a disability and that she earns a small income cleaning homes. Petitioner's daughter credibly testified that she and her husband filed for bankruptcy and received a discharge in 2015. Petitioner's daughter credibly testified that she and her husband have a low credit score because of the previous bankruptcy and their limited income. Petitioner's daughter credibly testified that she and her husband have outstanding medical bills and other bills. Petitioner's daughter credibly testified that the home and mortgage were obtained jointly at the time of purchase due to their difficult financial circumstances at the time.

The Department presented real estate listings that show available properties for sale in the [REDACTED] area where the property in question is located. The Department also asserted that there would be rental properties available for a reasonable price. The Department argued that Petitioner's daughter and her husband could use the equity they would realized from a sale to buy another home or rent another home.

The crux of the issue is whether a sale of the jointly held real estate would be an undue hardship on the joint owners [REDACTED] and whether they would be able to obtain comparable housing. Based on the credible testimony from [REDACTED] regarding her limited household income and poor credit history it would be an undue hardship for [REDACTED] and her husband to sell the jointly held real property where they reside. The amount they would realize after a sale with closing costs and transactions fees and after paying Petitioner for his share of the equity would not leave [REDACTED] and her husband with enough resources to obtain comparable housing. [REDACTED] also credibly testified that it would be stressful and a psychological burden to move both for she and her husband. Therefore, the Department should have found that the jointly held property was unavailable pursuant to BEM 400.

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 did not act in accordance with Department policy when it determined that the jointly held real property located at [REDACTED] was available and determined that Petitioner was over the asset limit.

**DECISION AND ORDER**

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Remove the real property located at [REDACTED] from Petitioner's available assets.
2. Reinstate MA-LTC benefits back to the date of closure if Petitioner is otherwise eligible.

AM/md



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**Aaron McClintic**  
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]

[REDACTED]

[REDACTED]

[REDACTED]

**Petitioner**

[REDACTED]

**Counsel for Petitioner**

[REDACTED]