



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: March 13, 2019
MAHS Docket No.: 18-013812
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, a telephone hearing was held on February 12, 2019, from Lansing, Michigan. The Petitioner was represented by Attorney [REDACTED] [REDACTED] [REDACTED] [REDACTED] appeared but did not testify. The Department of Health and Human Services (Department) was represented by Assistant Attorneys General Kyle Bruckner and Geraldine Brown. Renee Trudeau Assistance Payment Supervisor appeared and testified for the Department. Department Exhibit 1, pp. 1-19 was received and admitted. Petitioner Exhibit A, pp. 1-43 was received and admitted.

ISSUE

Did the Department properly deny Petitioner's Medical Assistance (MA) application 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. Petitioner owns a home located at [REDACTED] [REDACTED] Michigan.
2. The home located at [REDACTED] [REDACTED] Michigan was listed for sale from June 8, 2018 through September 9, 2018.
3. On September 28, 2018, Petitioner applied for MA-Long Term Care (MA-LTC).

4. On December 6, 2018, a Health Care Coverage Determination Notice was sent to Petitioner informing him that he was not eligible for MA-LTC because “the value of your countable assets is higher than allowed for this program.” (Ex. 1, p.6)
5. On December 12, 2018, Petitioner requested hearing contesting the denial of MA-LTC benefits.

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.

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. Count an asset that no longer meets these conditions. The asset becomes countable when a reasonable offer is received.

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. The definition of fair market value can be found in the glossary. If after a length of time has passed without a sale, the sale price may need to be evaluated against the definition of fair market value. BEM 400, pp.14-15)

In this case, the only asset in dispute is the home located at [REDACTED] Michigan. That home was listed for sale from June 8, 2018, through September 9, 2018. Petitioner applied for MA-LTC benefits on September 28, 2018.

Petitioner's Attorney argued that the home located at [REDACTED] Michigan qualified as being non-salable up until the listing expired on September 9, 2018. Petitioner's Attorney argued that since the property would have qualified as being unsalable for more than one day in September 2018, then Petitioner should have been found asset eligible for the entire month of September 2018, including on September 28, 2018, the date of application. Petitioner's Attorney cited BEM 400, p.7 and pp.14-15.


The Department's Attorney argued that the home located at [REDACTED] Michigan did not qualify as being non-salable at the time of application on September 28, 2018, because the listing had expired on September 9, 2018. The Department's attorney points to the clause in BEM 400 that reads as follows: "For applicants, an actual attempt to sell must have started at least 90 days prior to the application and must continue until the property is sold." (BEM 400, pp.15-16) The attempted sale of the [REDACTED] property did not continue until the property was sold. In fact, the home was not listed for sale on the date of application, September 28, 2018. Therefore, the property located at [REDACTED] Michigan did not qualify as being non-salable and was a countable-asset on the day of application. With the [REDACTED] as a countable asset, Petitioner was well over the asset limit and the denial on that basis was proper and correct. 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 acted in accordance with Department policy when it denied Petitioner's MA-LTC application due to excess assets.

DECISION AND ORDER

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

AM/nr



Aaron McClintic
Administrative Law Judge
for Robert Gordon, 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) 763-0155; 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

Geraldine A. Brown
Department of Attorney General
P. O. Box 30758
Lansing, MI 48909

Dickenson County DHHS- via electronic mail

D. Smith- via electronic mail

EQAD- via electronic mail

Counsel for Respondent

Kyle A. Bruckner
Department of Attorney General
P. O. Box 30758
Lansing, MI 48909

DHHS

Renee Trudeau
1401 Carpenter Ave.
Iron Mountain, MI 48901

Counsel for Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]