



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: March 27, 2019
MAHS Docket No.: 19-000650
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 three-way hearing was held on March 4, 2018, from Detroit, Michigan. The Petitioner was represented by [REDACTED], her Authorized Hearing Representative. [REDACTED] also appeared as a witness for the Petitioner. The Petitioner did not appear. The Department of Health and Human Services (Department) was represented by Assistant Attorney General Geraldine A. Brown and Assistant Attorney General Kyle Bruckner. Tara-Kai Escoc, an Eligibility Specialist with the Department, also appeared as a witness.

ISSUE

Did the Department properly deny the Petitioner's application for Medical Assistance (MA) for Long Term Care (LTC) due to Petitioner having 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. The Petitioner applied for MA for LTC on November 13, 2018.
2. On January 16, 2019, the Department issued a Health Care Coverage Determination Notice (HCCDN) denying the Petitioner's application due to excess assets stating: "Over asset limit due to the home property is in the trust and is a countable asset due to being in the trust". (Exhibit A, pp. 34 -37.)

3. At the time of the application, the Petitioner's home at [REDACTED] was placed in the [REDACTED] Family Trust (Trust) by a Quit Claim Deed which was executed by Petitioner and her spouse and notarized on January 11, 2016. The deed was not recorded with the Registrar of Deeds. The Petitioner is married, and her spouse was living in the home. (Exhibit A, pp. 22-33, and Exhibit A, p. 6.)
4. On January 21, 2019, the Petitioner's home was removed from the Trust by a Quit Claim Deed executed by the Petitioner and her spouse dated January 21, 2019. The home was no longer in the Trust and was considered a homestead and was exempt. The Petitioner reapplied for Medicaid on January 29, 2018. (Exhibit A, p. 12.)
5. The Department's Office of Legal Services/Trust and Annuities Unit reviewed the Trust and the Quit Claim Deed dated January 11, 2016, found that the trust was a Medicaid Trust as set forth in BEM 401 and that it was not a Special Needs Trust and could be amended and or revoked. Because the Trust is a revocable trust, all countable net income and countable assets in the Trust must be considered as assets. If the homestead has been transferred to the Trust, it is no longer exempt as an asset of the Trust. Should the property be conveyed out of the Trust back to the client, it would be exempt property effective the month it was transferred if it otherwise meets the homestead criteria. It concluded that the transfer of the homestead to the Trust was not a divestment. (Exhibit A, pp. 20-21.)
6. On January 24, 2019, the Petitioner's Authorized Hearing Representative (AHR) requested a timely hearing protesting the Department's determination.

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 Department received an application for Medicaid for Long Term Care from Petitioner on November 13, 2018. At the time of the application, Petitioner had entered LTC and was in a nursing home. After examining the information and the verifications provided by Petitioner, the Department determined that Petitioner was not

eligible for MA due to her homestead being placed in a Medicaid Trust, which made it a countable asset and caused Petitioner's assets to be over the \$2,000 asset limit required to be met to be eligible for Medicaid.

The asset limit for Supplemental Security Income (SSI)-related MA categories is \$2,000 for an asset group of one and \$3,000 for an asset group of 2. BEM 400 (October 2018), p. 8.

The definition of a homestead and its treatment for asset purposes is set forth in BEM 400. A homestead is where a person lives, unless absent from the homestead, and that they own. For purposes of determining MA LTC eligibility, the homestead is excluded as a countable asset. The homestead that an owner formerly lived in is excluded if the owner is in an LTC facility. BEM 400, p. 35.

The Department, when determining Medicaid eligibility, is required to refer all trusts documents provided by applicants to the Trusts and Annuities Unit to be evaluated for eligibility purposes. BEM 400, p. 30. To that end, the Department sent the [REDACTED] Family Trust (Trust) to be reviewed together with the Quit Claim Deed dated January 11, 2016, conveying the Petitioner's home (homestead) to the Trust. BEM 401 addresses Medicaid policy for trusts. The legal division determined that the Trust by its terms was revocable and met the definition of a Medicaid trust. In addition, it also found that the homestead was a trust asset and as such was countable. BEM 401 confirms that a homestead of an LTC patient is a countable asset of the Trust even if transferred before the patient was in LTC. In this case, the Petitioner and her spouse fully executed a Quit Claim Deed of the homestead to the Trust but did not record it. Notwithstanding, the deed was not recorded, it did serve to convey title to the homestead to the Trust; and as such, the homestead was no longer exempt from being counted as an asset. BEM 400, pp. 33-34. In addition, the Quit Claim Deed did not have to be registered with the Register of Deeds to be a legal document. BEM 400, p. 32. Thus, based upon these provisions, the asset value of the home caused the Petitioner's assets to exceed the Medicaid asset limit of \$2,000.

The home's fair market value was determined by the Department to cause the Petitioner to be over the asset limit. The valuation of the fair market value of the home was not at issue, it was the treatment of the homestead as an asset that was challenged by the Petitioner.

The Petitioner's AHR asserted on behalf of the Petitioner and her spouse that the Quit Claim Deed conveying the homestead to the Trust had been held in escrow and not recorded. The Trust and Deed were done as an estate plan to provide an easier way for heirs to transfer property. The Petitioner intended that she and her spouse had always intended to retain ownership of their home as their homestead until their deaths. The deed was not recorded in the event that she and her spouse wished to sell the homestead prior to their deaths. Notwithstanding these assertions once the fully executed Quit Claim Deed conveying the homestead to the Trust was disclosed, the

Department correctly determined it was no longer exempt as a homestead as discussed above and became a countable asset which caused the Petitioner to be over the Medicaid asset limit.

Once the Petitioner and her spouse deeded the home back to themselves, removing it from the Trust, it became an exempt asset; and Petitioner reapplied for MA LTC.

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 the Petitioner's application for Medicaid Long Term Care due to excess assets.

DECISION AND ORDER

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

LMF/jaf



Lynn M. Ferris

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

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Department of Attorney General
AG-HEFS-MAHS

DHHS

Vivian Worden
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Authorized Hearing Rep.

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Petitioner

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