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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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

Date Mailed: July 15, 2019
MOAHR Docket No.: 19-004473
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. A hearing scheduled for June 5, 2019, was adjourned. After due notice, a telephone hearing was held on June 19, 2019, from Lansing, Michigan. Petitioner was represented by his attorney [REDACTED] [REDACTED] [REDACTED]. The Department of Health and Human Services was represented by Assistant Attorney General Kyle A. Bruckner. Eligibility Specialist Tom Jessmore and AP Supervisor Rebecca Ferril appeared as witnesses for the Department.

ISSUE

Did the Department of Health and Human Services (Department) properly deny 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] [REDACTED] 2018, the Department received Petitioner's Assistance Application as a household of one, which was completed by his Authorized Representative (AR) [REDACTED] [REDACTED]. Exhibit A, pp 14-18.
2. The Department received Petitioner's Health Care Coverage Supplemental Questionnaire (DHS-1004). Exhibit A, pp 10-13.
3. On September 26, 2018, Petitioner entered into a Burial Space Sales Contract with [REDACTED] [REDACTED] purchased a Victoriaville Mahogany, Milano Eggshell Velvet Casket for \$10,500, and paid the entire contract price. Exhibit A, pp 4-9.

4. [REDACTED] is a foreign limited liability company existing under the laws of the state of New Mexico and licensed to sell contracts to purchase burial space items in Michigan. Exhibit A, pp 19-24.
5. On March 28, 2019, the Department notified Petitioner that he was not eligible for Medical Assistance (MA) as of September 1, 2018. Exhibit A, pp 1-3.
6. On April 9, 2019, the Department received Petitioner's request for a hearing protesting the denial of his application for Medical Assistance (MA).

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.

Assets means cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. Personal property is any item subject to ownership that is not real property. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (October 1, 2019), pp 1-10.

The asset limit for SSI-related MA categories is \$2,000 for a group of one. BEM 400, p8.

The Department will exclude one burial space held for each of the following:

- Each qualified fiscal group member.
- Whether by blood, adoption or marriage, the member's:
 - Parents.
 - Minor and adult children.
 - Siblings.
- The spouse of each person listed above.

BEM 400, p 51.

Burial space items in a prepaid funeral contract must be identified and valued separately from non-burial space items to be excluded. If the contract shows the purchase of a specified burial space at a specified price, determine whether such space is held for the client or member of the client's immediate family. If the space is held for the individual, determine if the contract is irrevocable or revocable. If irrevocable, it is not a resource. If the contract is revocable, it is an excludable resource. The burial space must continue to meet the held for criteria to be excluded. If a space is transferred to another individual (even if listed above) it no longer meets the held for criteria and needs to be evaluated for divestment.

Held For. A burial space is held for an individual when someone currently has:

- Title to and/or possesses a burial space intended for the individual's use (example: has title to a burial plot, owns a burial urn stored in the basement for his own use).
- A contract with a funeral service company for specified burial spaces for the individual's burial (that is, an agreement that represents the individual's current right to the use of the items at the amount shown).

A burial space does not meet the definition of held for an individual under an installment sales contract or similar device if the purchase price is not paid in full and any of the following are true:

- The individual does not currently own the space.
- The individual does not currently have the right to use the space.
- The seller is not currently obligated to provide the space.

Until all payments are made on the contract, the amounts paid might be considered burial funds.

BEM 400, pp 51-52.

On [REDACTED] [REDACTED] 2018, the Department received Petitioner's Assistance Application requesting MA benefits. On March 28, 2019, the Department determined that the funds transferred in a Burial Space Sales Contract were not excludable assets making this revocable contract a countable asset. The Department then denied the application for MA because Petitioner's countable assets exceeds the \$2,000 limit.

The Department's representative argues that the September 26, 2018, Burial Space Sales Contract was not an arm's length transaction because Petitioner's Authorized Representative (AR) for his [REDACTED] [REDACTED] 2018, Assistance Application was also a party to the sale of the \$10,500 casket he purchased for his child.

This Administrative Law Judge finds that there is no basis for not excluding the Burial Space Sales Contract from countable assets based on a finding that it was not an “arm’s length transaction.” Estate planning and “spending down” one’s assets for the purpose of becoming eligible for MA benefits is a legitimate method of asset management. The hearing record does not support a finding that the September 26, 2018, Burial Space Sales Contract is fraudulent, or that [REDACTED] is not a legitimate company eligible to do business in Michigan.

Therefore, the issue to be decided here is whether the Burial Space Sales Contract is not an excluded asset that causes Petitioner to be ineligible for MA benefits. The value of that contract is the equity value of the burial space item, which is the fair market value minus the amount legally owed in a written lien provision. BEM 400, p 51. In this case, it was not disputed that the value of the contract is \$10,500, that this is the fair market value of that burial space item, and that there is not a lien on the contract.

Countable assets cannot exceed the applicable asset limit, but not all assets are counted, and some assets are excluded. BEM 400, p 2.

The Department will exclude one burial space held for an adult child. BEM 400, p 51.

The Department’s representative argues that the casket purchased does not meet the definition of “held for” as required by BEM 400.

A burial space that is “held for” the individual might not be a countable asset, or it may be an excludable asset. A burial space that is not “held for” needs to be evaluated for divestment. BEM 400, p 51.

In this case, the Department did not evaluate whether there was divestment because Petitioner was found to be ineligible for MA benefits based on excess assets. In other cases before MOAHR, which are not binding on this case, the lack of an arm’s length transaction was found to be material to whether there had been a divestment. This case can be differentiated from other cases because there was no analysis of divestment, but only whether the asset held by Petitioner was an excludable “burial space.”

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 Burial Space Sales Contract was not an excludable asset and denied Petitioner’s application for Medical Assistance (MA) based on excess assets because the contract for the casket is an excluded asset.

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:

Re-register the [REDACTED] 2018, Assistance Application and initiate a determination of Petitioner's eligibility for Medical Assistance (MA).

KS/hb



Kevin Scully
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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Eileen Asam
701 S. Elmwood Suite 19
Traverse City, MI 49684

Grand Traverse County, DHHS

BSC1 via electronic mail

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