



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]

Date Mailed: May 28, 2020  
MOAHR Docket No.: 20-001225  
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; 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 3-way telephone hearing was held on May 14, 2020, from Trenton, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Mark Kwarciany, manager.

**ISSUE**

The issue is whether MDHHS properly denied Petitioner's application requesting Medicaid and Medicare Savings Program (MSP).

**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] 2019, Petitioner applied for Medicaid and MSP.
2. As of December 2019, Petitioner was disabled, unmarried, a recipient of Medicare, and not a caretaker to minor children.
3. As of December 2019, Petitioner owned at least three parcels of land which were used as rental properties. In total, the SEV of the parcels exceeded \$50,000.
4. On January 7, 2020, MDHHS denied Petitioner's application requesting Medicaid and MSP due to excess assets.
5. On January 31, 2020, MDHHS received Petitioner's hearing request disputing the denial of Medicaid and MSP.

## **CONCLUSIONS OF LAW**

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. MDHHS 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 his application requesting Medicaid and MSP. Exhibit A, pp. 29-30. A Health Care Coverage Determination Notice dated January 7, 2020, stated that each program was denied due to excess assets. Exhibit A, pp. 7-10.

Medicaid is also known as Medical Assistance (MA). BEM 105 (April 2017), p. 1. The Medicaid program includes several sub-programs or categories. *Id.* To receive MA under a Supplemental Security Income (SSI)-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Medicaid eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MICHild and Healthy Michigan Plan is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.*

Persons may qualify under more than one MA category. *Id.*, p. 2. Federal law gives them the right to the most beneficial category. *Id.* The most beneficial category is the one that results in eligibility, the least amount of excess income or the lowest cost share. *Id.*

As of [REDACTED] 2019 (the date of application), Petitioner was disabled, not pregnant, a Medicare recipient, and not a caretaker to minor children. Given Petitioner's circumstances, he is ineligible for all MAGI-related categories. As a disabled and/or aged individual, Petitioner is potentially eligible for Medicaid under the SSI-related category of Aged/Disability-Care (AD-Care).<sup>1</sup> MSP is also an SSI-related Medicaid category. BEM 165 (January 2018) p. 1.

For SSI-related Medicaid categories, all types of assets, including real property are countable. BEM 400 (July 2019) p. 3. Real property value is the SEV multiplied by two. *Id.*, p. 33. For SSI-related Medicaid, the asset limit for an unmarried individual is \$2,000. *Id.*, p. 8. The MSP asset limit for an unmarried individual is \$7,730. *Id.*

As of Petitioner's application date, he owned at least three parcels of land other than his homestead. See Exhibit A, pp. 13-17. MDHHS determined Petitioner's asset eligibility for Medicaid and MSP by adding the SEV of his land parcels and multiplying the total by two. MDHHS testified that multiplying the total SEVs of Petitioner's properties by two

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<sup>1</sup> BEM 163 outlines the eligibility requirements for AD-Care.

resulted in \$119,400 in countable assets. Petitioner testimony acknowledged that \$119,400 was a fair estimate for the doubling of his properties' SEVs.

Petitioner responded that MDHHS erred by counting his real properties as assets. Petitioner testified that each of his parcels produces a modest rental income. Because the properties produced an income, Petitioner contended that his properties are "employment assets", and therefore, not counted as assets.

Employment-related assets, such as farmland and the building where a business is located, might be excluded as assets. BEM 400 (July 2019) p. 38. Employment assets are those commonly used in a business, a trade, or other employment. *Id.*, p. 58. Examples of employment assets include farmland, tools, equipment and machinery, inventory, livestock, savings or checking account used solely for a business, the building a business is located in, vehicles used in business such as a farm tractor or delivery truck. *Id.* For SSI-related Medicaid, employment assets are excluded if required by a person's employer and produce income directly through their use.

Federal regulations are consistent with rejecting Petitioner's arguments. Federal regulations specifically exclude the equity value of real property. 20 CFR 416.1222(a). Federal regulations also exclude up to an additional \$6,000 exclusion if a property produces a net annual income to the individual of at least 6 percent of the excluded equity. *Id.* Allowing only a partial exclusion of equity for income-producing property (such as a rental property) would be contradictory to Petitioner's argument that all income-producing property should be excluded as an asset.

MDHHS policies mirror the federal regulations. BEM 400 (January 2020) p. 33 and 38. Neither federal regulations nor MDHHS policy clearly exclude rental property as a countable asset. Any ambiguities in MDHHS policy are likely due to an intent to mirror federal regulations rather than an implied exclusion of rental property as an asset. Given the evidence, the equity value of Petitioner's rental properties is a countable asset; additionally, \$6,000 of Petitioner's equity value is potentially excludable.

During the hearing Petitioner made no claim that his equity value in the properties would significantly reduce his countable assets. Petitioner also did not claim that a potential \$6,000 equitable value exclusion would render him eligible for Medicaid, though MDHHS calculated that Petitioner's income rendered him ineligible for any equity exclusion. Exhibit A, p. 3.

Given the evidence, Petitioner's countable assets are \$119,400. As Petitioner's countable assets exceed the asset limits for SSI-related Medicaid and MSP, the denial of Petitioner's application requesting Medicaid and MSP was proper.

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's application requesting Medicaid and MSP dated [REDACTED] 2019. The actions taken by MDHHS are **AFFIRMED**.

CG/cg



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**Christian Gardocki**

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

**Via Email:**

MDHHS-Delta-Hearings  
D. Smith  
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**Petitioner – Via First-Class Mail:**

