



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: January 18, 2019
MAHS Docket No.: 18-012041
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 December 19, 2018, from Lansing, Michigan. The Petitioner was represented by his son and Power of Attorney (POA), [REDACTED]. The Department of Health and Human Services (Department) was represented by Michelle Morley, Assistance Payments Supervisor.

ISSUE

Did the Department properly determine the Petitioner's eligibility 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. Petitioner applied for MA benefits.
2. On September 6, 2018, Petitioner was approved for MA citing a policy clarification stating that a land contract done in 2017 was not divestment. Department Exhibit 1, pgs. 34-35.
3. On October 8, 2018, DHHS received a call from the King's Nursing Home Center stating that they were unable to bill for Petitioner's care.
4. On October 29, 2018, the Department Caseworker sent Petitioner a Health Coverage Determination Notice, DHS-1606, that Petitioner was not eligible for MA

effective December 1, 2018, due to excess assets. Department Exhibit 1, pgs. 18-21.

5. On November 5, 2018, the Department received a hearing request from the Petitioner, contesting the Department's negative action.

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 found Petitioner to be excess assets for MA because his land contract was not actuarially sound. Department Exhibit 1, pgs. 8-13. To be actuarially sound, the investment amount is returned to the owner within their Medicaid life expectancy. For Petitioner, his life expectancy is 3.64 years. The current land contract is for \$47,000 with 3% interest and payments of \$600 per month starting in April 1, 2017. With this schedule of payments, there would be 88 payment over 7.33 years. Department Exhibit 1, pgs. 24-26. The Department added a promissory note of \$23,500 on BRIDGES, which resulted in Petitioner being over the asset limit. BEM 400.

During the hearing, Petitioner's son and POA, stated that the property in question was inherited by his mother. His father, Petitioner, was not a beneficiary and not listed on the deed. He inherited the house when his mother died. Petitioner's son stated that he put his father, Petitioner, on the deed so that he could have some income from the property for his needs. When Petitioner passes, the income from the property will come back to him as stated in the contract. Petitioner Exhibit 1, a-b.

As a result, the property in question is not an asset for Petitioner, but rather a source of income while he is alive. The Department erred in just looking at the current deed but needed to look at the original deed to see that Petitioner's son had quick claimed and added his father, Petitioner, to the deed. As the original owner, Petitioner's son has the right to set the parameters of the conditions of adding his father to the deed, which he did in the contract where Petitioner while he is alive is entitled to the \$600 a month paid under the land contract. However, when Petitioner passes, the contract is clear that Petitioner's son will be the one receiving the \$600 a month paid under the land contract.

This is not divestment, but a gift of income from a son to his father. The \$600 should be counted as monthly income for Petitioner in determining his eligibility for MA.

DECISION AND ORDER

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 denied the Petitioner for MA due excess assets where the \$600 a month the Petitioner receives is monthly income.

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. Initiate a redetermination of Petitioner's eligibility for MA retroactive to December 1, 2018.
2. Based on policy, the Department should provide Petitioner with written notification of the Department's revised eligibility determination and issue the Petitioner any retroactive benefits he may be eligible to receive, if any.

CF/hb



Carmen G. Fahie
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

DHHS

Michelle Morley
715 S Loxley Rd
Houghton Lake, MI 48629

Roscommon County, DHHS

BSC1 via electronic mail

D. Smith via electronic mail

EQADHShearings via electronic mail

Petitioner

[REDACTED]
MI

Authorized Hearing Rep.

[REDACTED]