



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: March 5, 2020
MOAHR Docket No.: 19-012686
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 commenced on January 15, 2020, from Detroit, Michigan. Petitioner was represented by her attorney, [REDACTED], and her daughter/Power of Attorney, [REDACTED], who was called as a witness on Petitioner's behalf. The Department of Health and Human Services (Department) was represented by Assistant Attorney General (AAG), Tonya Jeter. AAG Jeter called Julianne Schultz, Long Term Care Eligibility Specialist, and Bridget Heffron, Department Eligibility Policy Specialist, as witnesses. Kelly Teed, Department Hearing Facilitator, was present for the hearing as an observer.

The hearing was not completed on January 15, 2020 and good cause was established to continue the hearing. Pursuant to an Order for Continuance and Notice of Continued Hearing, the second day of hearing commenced on January 23, 2020. The individuals identified above were also present for the second day of hearing. Ms. Green and Ms. Schultz were recalled as witnesses. There were no additional witnesses and the record closed at the conclusion of the hearing on January 23, 2020.

ISSUE

Did the Department properly deny Petitioner's application for Medical Assistance (MA) benefits on the basis that the value of her countable assets exceeded the asset limit?

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 previously owned and was residing in a condo in [REDACTED]. Petitioner moved to an assisted living facility and in November 2017, she sold her condo in [REDACTED]. Petitioner remained in the assisted living facility until on or around March 28, 2019, when she was transferred to a long-term nursing facility. (Exhibit A, pp 133–135)
2. On or around [REDACTED], 2019, a Long-Term Care (LTC) Application for Health Care Coverage Patient of Nursing Facility (DHS-4574) (Application) was submitted to the Department on Petitioner's behalf.
3. With the Application, Petitioner included a copy of her April 2012 Trust Agreement and the First Amendment to the Trust Agreement which identified the two pieces of real property she owned at that time, the [REDACTED] condo and a real property in [REDACTED]. (Exhibit A, pp. 38-51)
4. In connection with the Application, Petitioner disclosed that she owns a home/property on [REDACTED], town of [REDACTED], in [REDACTED] (Italy property). Petitioner also disclosed that she grew up in this home, that she lived there until she was in her [REDACTED]s before she moved to the United States, and that she still considers this her "home" and has always wanted to return. (Exhibit A, pp. 30-32)
 - a. The self-attested value of the property was \$25,000. (Exhibit A, pp. 30-32)
 - b. Petitioner asserted that this was her homestead for purposes of her MA eligibility and further maintained that it could also be considered an unavailable resource as it is a non-salable asset. (Exhibit A, pp. 30-32)
 - i. Petitioner did not include any documentation verifying the non-salability of the property or the attempts that she had made to sell the property prior to the Application.
5. The Department concluded that the Italy property could not be considered Petitioner's homestead and counted its attested value of \$25,000 as an asset.
6. The Department also concluded that Petitioner had cash assets in the amount of \$1,454.64. (Exhibit A, p. 123, 128-130)
7. On October 10, 2019, the Department sent Petitioner of a Health Care Coverage Determination Notice (Notice) advising her that from August 1, 2019 ongoing, she was ineligible for MA on the basis that the value of her countable assets was higher than allowed. The Notice further indicates that the application record was updated to the client stated value of the real estate in Italy. The stated value amount of the real estate held is over the asset limit for this program. (Exhibit A, pp 118 – 122)

8. On or around November 22, 2019, Petitioner, through her attorney, filed a hearing request disputing the Department's denial of the MA application. (Exhibit A, pp. 3-7)

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 the October 10, 2019 Notice, the Department concluded that Petitioner was ineligible for MA from August 1, 2019, ongoing, because the value of her countable assets exceeded the limit for MA eligibility. As a result, the Department denied Petitioner's [REDACTED], 2019 Application. At issue in this case is Petitioner's Italy property and the Department's finding that it was a countable asset, rather than an excluded homestead.

Asset eligibility is required for MA coverage under SSI-related MA categories, which are categories providing MA coverage to individuals who are aged, blind or disabled. BEM 400 (July 2019), p. 1, 6; BEM 105 (April 2017), p.1. Asset eligibility will exist when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400, p.6. The asset limit for Petitioner's MA asset group size of one is \$2,000. BEM 400, pp.7-8; BEM 211 (July 2019), pp. 1-8. Homes and real property are assets. In determining a client's asset eligibility for MA, the Department will consider the value of the home/real property by assessing its fair market and equity value. BEM 400, pp. 32-33. The Department will also consider whether a home or piece of real property is considered a client's homestead, and thus, excluded as a countable asset for MA purposes. BEM 400, pp. 34-35.

The BPG Glossary defines a homestead as the "residence that a person owns (or is buying) where they usually live. The homestead includes all adjoining property, [and] any other buildings on the property, but does not include other residences on the property." BPG (April 2019), p. 34; See also BEM 400, pp. 34-35. The Department is to exclude only one homestead for an asset group, and if an individual claims two homesteads, the Department will exclude the homestead of the individual's choice.

BEM 400, p. 35. Department policy also allows for the exclusion of a homestead in which a client is absent from if the owner is in an LTC facility, provided that the owner lived in it prior to the time the individual left the property. BEM 400, pp.36-37.

In this case, the Department contended that it denied Petitioner's [REDACTED], 2019 Application because her countable assets, specifically, the Italy property which had a client stated value of \$25,000, was greater than the \$2,000 asset limit applicable to her group size. It is noted that the Department is not required to verify the actual value of a countable asset if the client's statement of value is in excess of the asset limit. BEM 400, p.62. The Department's witnesses testified that in reaching this conclusion, they relied on the information provided by Petitioner with the Application and found that the Italy property could not be considered Petitioner's homestead for MA asset purposes and thus, its value was countable. The Department further concluded that although Petitioner owned the Italy property prior to her admission to the LTC facility, because it did not meet the homestead criteria/definition, the absent from the homestead exception in BEM 400 which would have excluded the property as a countable asset, did not apply in this case.

Petitioner's attorney argued that the Italy property qualifies as a homestead because at some point prior to entering the LTC facility, Petitioner lived in the Italy property and thus, the absent from the homestead policy should apply, excluding its value from Petitioner's countable assets. Petitioner's attorney asserted that the Department's policy does not specify that the property referenced in the absent from homestead provision had to be the property Petitioner lived in immediately prior to her admission into the LTC facility and further does not specify a time limit on how long ago an individual must have lived in the property for it to be considered a homestead. However, this interpretation of the homestead definition and the absent from homestead policy appears overly broad. Petitioner's attorney also referred to and relied upon the Department's policy in BEM 400 with respect to migrants and excluding their choice of homestead, noting that a property does not have to be in Michigan or the United States in order to qualify for the homestead exclusion. It is noted that while the Department did not dispute that a homestead can be located outside of the United States, the policy relied upon by Petitioner's attorney is limited to cases involving the Food Assistance Program and would not apply to the determination of Petitioner's SSI-Related MA asset determination.

The Department asserted that while Petitioner, who was [REDACTED] years old at the time of the Application may have visited Italy for summer vacations, she had not actually lived in the Italy property for over 75 years since the time she moved to the United States at around age [REDACTED]. This was supported by the testimony of Petitioner's daughter, [REDACTED], who confirmed that although the Italy property was still being maintained and the taxes/utilities paid, Petitioner had not been to even visit the property since sometime in the 1990s. [REDACTED] further testified that during the time Petitioner was not visiting the Italy property, her primary residence was the [REDACTED] condo where she lived until her admission to an assisted living facility about six years prior to the Application.

It was undisputed that prior to her admission to assisted living and then, the LTC facility, Petitioner lived in the [REDACTED] condo and further that, the condo was sold in November 2017. Thus, the Department asserted that had Petitioner still owned the [REDACTED] condo at the time of the Application, it would have fit the definition of homestead, as that is the home in which she usually lived and would have been the property Petitioner was considered absent from and excluded from the MA asset determination. Furthermore, it was established that at the time of the Application, the [REDACTED] condo had already been sold; thus, Petitioner could not have claimed two homesteads for which she would be entitled to choose from as an excluded asset.

Therefore, upon thorough review, based on the information available to the Department, it properly concluded that because Petitioner did not usually live at her Italy property prior to her admission to LTC or at any point during the 75 years prior to her admission to LTC, the Italy property could not be considered a homestead. Furthermore, the Department properly concluded that because at the time of the Application Petitioner did not have a homestead, she was not eligible for a homestead exclusion.

Petitioner's attorney raised additional arguments with respect to unavailability of the Italy property as an asset, asserting that it should be deemed non-salable and not countable as an asset.

An asset must be available to be countable and availability might be effected by efforts made to sell the property. BEM 400, p. 10. The Department is to give assets such as homes or real property a \$0 countable value when it has no current market value as shown by: (i) 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; or (ii) for homes and 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. BEM 400, pp. 14-15. Additionally, for applicants, an actual sale attempt to sell must have started at least 90 days prior to the application and must continue until the property is sold. Department policy also requires that the seller has a set price for fair market value, is actively advertising the sale in publications such as local newspapers and has currently listed the property with a licensed realtor. If a length of time has passed without a sale, the sale price may need to be evaluated against the definition of fair market value found in the Department's glossary. BEM 400, pp. 14-15.

At the hearing, the Department's witnesses testified that while processing the Application, Petitioner asserted the homestead exclusion was the basis for not counting the value of the Italy property in the MA asset determination and not that the property was unavailable because it was non-salable. Ms. Schultz initially testified that she did not consider whether the property was non-salable because the Application and attached documents did not indicate that the property was for sale. Later in the hearing, Ms. Schultz stated that she did consider the above referenced policy and testified that because Petitioner did not provide any written documentation verifying that the property

was non-salable, or that Petitioner had attempted to sell the property within the few months prior to the Application, the Department applied the \$25,000 stated value towards Petitioner's countable assets.

Petitioner's daughter testified as to the attempts made to sell the property and noted the differences in the processes of real estate sales in Italy and the United States. [REDACTED] stated that the Italy property is located in a rural area with limited population and although individuals have looked at the property, there have been no offers made to purchase it.

While the Department is not to require verification when countable assets exceed the limit based on a person's own statement of value, at application, the Department is to verify factors affecting exclusion of an asset, including its unavailability. Specifically as applied to SSI-Related MA, the Department is required to verify that an asset is non-salable. BEM 400, pp. 62-63. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130 (April 2017), p. 3. Although the client must obtain the required verification, the Department must assist if a client needs and requests help. If neither the client nor the Department can obtain the verification despite a reasonable effort, the Department is to use the best available information; and if no evidence is available, the Department is to use its best judgment. BAM 130, pp. 3-4. For MA cases, clients are given 10 calendar days (or other time limit specified in policy) to provide the verifications requested by the Department. BAM 130, pp.7-9. If the client cannot provide the verification despite a reasonable effort, the Department is to extend the time limit to submit the verifications up to two times. BAM 130, pp. 7-9. Verifications are timely if received by the date they are due. BAM 130, pp.7-9. The Department will send a negative action notice when the client indicates refusal to provide a verification, or the time period given has elapsed. BAM 130, pp. 8-9.

A review of the documentation submitted with the Application, specifically, the Homestead & Real Property explanation, shows that Petitioner informed the Department that the family had made attempts to sell the property throughout the years without success, and further, that Petitioner asserted it should be considered an unavailable resource due to it being a non-salable asset. (Exhibit A, pp. 30-32). Therefore, the Department should have verified its unavailability prior to concluding that its value was countable. Although Ms. Schultz indicated that she may have sent Petitioner a verification checklist or similar request for verification, Petitioner's attorney argued that he does not recall receiving any such request for verification. There was no VCL presented for review and the evidence as presented is insufficient to show that the Department properly considered the unavailability of the Italy property as a non-salable asset. Therefore, because the Department did not properly consider whether the Italy property was non-salable, the Department failed to establish that its stated value of \$25,000 was countable towards Petitioner's MA asset limit.

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 Petitioner's Application and determined that she was ineligible for MA on the basis that the value of her countable assets was higher than allowed.

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:

1. Register and reprocess Petitioner's [REDACTED], 2019 MA application to determine her MA eligibility under the most beneficial program from August 1, 2019, ongoing;
2. Provide Petitioner with MA coverage under the most beneficial category, if eligible, from August 1, 2019, ongoing, in accordance with Department policy; and
3. Notify Petitioner and her AHR in writing of its decision.

ZB/tm



Zainab A. Baydoun

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

Counsel for Respondent

Tonya Celeste Jeter
P.O. Box 30758
Lansing, MI 48909

DHHS

Vivian Worden
21885 Dunham Road
Clinton Twp., MI 48036

Counsel for Petitioner

[REDACTED]

Petitioner

[REDACTED]

cc: ME—D. Smith; EQADHShearings
Macomb AP Specialist (4)