



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI
[REDACTED]

Date Mailed: July 29, 2020
MOAHR Docket No.: 20-003780
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 July 15, 2020, from Lansing, Michigan. The Petitioner was represented by Attorney Christopher Letcher, Legal Aid of Western Michigan (P72282). The Department of Health and Human Services (Department or Respondent) was represented by Assistant Attorney General Megan Schaar (P78736). Yolanda Lopez, Eligibility Specialist, and Bridget Heffron, Department Specialist appeared as witnesses.

Petitioner's Exhibit 1-17 and Respondent's Exhibit A pages 1-51 were admitted as evidence.

ISSUE

Did the 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], 2020, an application for FAP/MA assistance was received from Petitioner's authorized hearings representative.
2. On February 28, 2020, DHS-1004 and DHS-3243 Retroactive Medicaid Application was mailed to Petitioner.

3. On March 26, 2020, the Department sent Petitioner notice by DHS-1605 Notice of Case Action Central Print that the application was denied because Petitioner has excess assets.
4. On April 24, 2020, Petitioner's Representative filed a Request for Hearing to contest the Department's negative action.
5. Petitioner is separated from her husband.
6. Petitioner resides in Michigan.
7. Petitioner's husband resides in a jointly owned home in Florida.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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).

Medicaid is the joint state/federal program that provides payment for covered health care services for eligible ***indigent*** individuals. MCL 400.105, *et seq*; 42 USC 1396a, *et seq*. Medicaid is a means tested program. If Medicaid applicants have sufficient assets, income or insurance to pay for health care they do not qualify for the Medical Assistance program.

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.

The Michigan Department of Health and Human Services (MDHHS) believes that children are best served by living in supportive family settings. The mutual responsibility of family members for each other and their commitment to caring for each other are key

to building strong families..... **Spouses are responsible for each other.** (BEM 210, page 1, Emphasis Added)

The household for a tax filer, who is not claimed as a tax dependent, consists of:

- Individual.
- Individual's spouse.
- Tax dependents. (BEM 211, page 2)

The regulations governing the determination of eligibility provide that resources mean cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his support and maintenance. If the individual has the right, authority or power to liquidate the property, or his share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual (or spouse).20 C.F.R. § 416.1201(a).

Pertinent Department Policy in BEM 400 dictates:

Assets mean:

- Cash (see Cash in this item).
- Personal property. Personal property is any item subject to ownership that is not real property (examples: currency, savings accounts and vehicles).
- Real property. Real property is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. BEM 400, page 1

All types of assets are considered for SSI-related MA categories. BEM 400, page 2 Asset eligibility is required for G2U, G2C, RMA, and SSI-related MA categories. Asset eligibility exists 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. At application, do not authorize MA for future months if the person has excess assets on the processing date.

If an ongoing MA recipient or active deductible client has excess assets, initiate closure. However, delete the pending negative action if it is verified that the excess assets were disposed of. Payment of medical expenses, living costs and other debts are examples of ways to dispose of excess assets without divestment. LTC and waiver patients will be penalized for divestment; see BEM 405, MA DIVESTMENT. BEM 400, page 6

For all other SSI-related MA categories, the asset limit is:

- \$2,000 for an asset group of one.
- \$3,000 for an asset group of two BEM 400, page 8

Jointly owned assets are assets that have more than one owner. Note: For Freedom To Work determinations, jointly owned assets are considered to belong to the initial person. An asset is unavailable if **all** the following are true, and an owner cannot sell or spend his share of an asset:

- Without another owner's consent.
- **The other owner is not in the asset group.**
- The other owner refuses consent. (BEM 400, page 11)(Emphasis Added)

Jointly owned real property is only excludable if it creates a hardship for the other owners. Note: In SSI-related MA a divestment has occurred if joint owners are added during the five year look back period. See BEM 405, MA DIVESTMENT for determination of a divestment penalty.

Ownership documents for jointly owned real property commonly use one of four phrases:

- Joint Tenancy: no owner can sell unless all owners agree.
- Joint Tenancy with Right of Survivorship: no owner can sell unless all owners agree.
- **Tenancy by the Entirety: same as joint tenancy except the owners are husband and wife. Neither owner can sell unless both owners agree.**
- Tenancy-in-Common: each owner can sell their share without the other owner's agreement. BEM 400, page 12.

Note: **For jointly owned real property count the individual's share unless sale of the property would cause undue hardship. Undue hardship for this item is defined as a co-owner uses the property as his or her principal place of residence and they would have to move if the property were sold and there is no other readily available housing.** BEM 400, page 13. (Emphasis Added)

In the instant case, the parties agreed that the only issue in this case is the joint property and whether it is a hardship to Petitioner for the Department to count the jointly owned home in Florida as an asset for Petitioner.

Petitioner argues that Social Security Program Operations Manual System (POMS) **SI 01130.130 Real Property Whose Sale Would Cause Undue Hardship, Due to Loss of Housing, to a Co-Owner** applies in this case. The POMS states:

Effective April 1, 1988, the value of an individual's ownership interest in jointly owned real property is an excluded resource **for as long as** sale of the property would cause undue hardship, due to loss of housing, to a co-owner.

Undue hardship would result if such co-owner:

- uses the property as his or her principal place of residence;

- would have to move if the property were sold;
- and has no other readily available housing.

Example 1 — Undue Hardship:

George and Martha live together in a house they co-own. George, a Supplemental Security Income (SSI) recipient, leaves the household with no intent to return. Martha has no other place to live and would face an undue hardship if George sold the house. Although George has ownership interest in a house that he no longer lives in, it would impose an undue hardship on Martha if he sold the house. Therefore, we would not count the value of George's interest in the house as a resource as long as Martha lives there.

Petitioner is separated from her husband. Petitioner resides in Michigan. Her husband resides in a jointly owned home in Florida. They remain legally married. In the POMS examples, none of the parties are married to one another and are thus, distinguished from the instant circumstances.

Petitioner's representative argues that it would be an undue hardship on Petitioner's husband if he were forced to sell his home in Florida so that it would not be a countable asset for Petitioner's Medical Assistance eligibility purposes. Petitioner's husband indicates in his statement, having to move from his home would add additional stress to his daily life which is already stressful due to his physical and mental impairments. He lives on a fixed income and would not be able to afford comparable housing in the same, safe area where he lives if he were forced to sell and move. He also indicates that he would not be able to qualify for a mortgage or even a lease due to his poor credit and being on a fixed income makes it difficult for him to improve his credit. His current monthly house payment is around \$990. An internet search for available 3-bedroom Apartments in Cape Coral, Florida at or under \$990 yielded NO RESULTS matching that criteria. Petitioner's Representative contends that the sale of the jointly owned property in question here, would in fact result in an undue hardship for the co-owner who resides in the property as his primary residence and, therefore, the property should be excluded as an asset for the purpose of determining Ms. [REDACTED]'s eligibility for Medicaid and Food Assistance benefits.

The Department Representative argues that Petitioner's husband has no undue hardship. He could sell the jointly owned home and move into an apartment, many of which are readily available in the area he lives in in Florida. Petitioner and her husband remain legally married and are a fiscal group of two people. Both Petitioner and her estranged husband are joint owners of the property and are required by policy to remain in the same asset group. Thus, the home in Florida is a jointly owned asset which must be counted when determining Medical Assistance eligibility for Petitioner.

The undersigned Administrative Law Judge finds that Petitioner and her estranged husband are in the same fiscal asset group because Medicaid policy requires that spouses are responsible for one another. They are legally married and remain as one

fiscal group. The property in Florida is jointly owned by Petitioner and her husband. Thus, neither Petitioner nor her spouse meet the criteria to establish undue hardship. Therefore, the Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with the Department policy when it determined that the Florida Property is an available, countable asset when determining Petitioner's eligibility for Medical Assistance benefit eligibility.

Petitioner's allegation that Petitioner's circumstances constitute an undue hardship is a compelling equitable argument to be excused from the Department's program policy requirements. Equity powers are not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Health and Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the Department policy set out in the program manuals.


Furthermore, administrative adjudication is an exercise of executive power rather than judicial power and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

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 determined that the Florida home is a joint marital asset that is countable and available for purposes of Petitioner's eligibility for Medical Assistance benefit determination. The Department's decision must be upheld under the circumstances.

DECISION AND ORDER

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

LL/hb



Landis Lain
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

Kalamazoo County via electronic mail

BSC3 via electronic mail

D. Smith via electronic mail

EQADHShearings via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Counsel for Respondent

Meghan E. Schaar, AAG via electronic mail

Petitioner

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