



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: August 20, 2020  
MOAHR Docket No.: 20-003939  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Jeffrey Kemm

### **HEARING DECISION**

On June 4, 2020, Petitioner, [REDACTED] requested a hearing to dispute a May 21, 2020, Health Care Coverage Determination Notice, which notified Petitioner that she was not eligible for Medical Assistance (MA). This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; 42 CFR 431.200 to 431.250; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on August 13, 2020.

Petitioner's attorney, Gregory Hodge, appeared on Petitioner's behalf. Respondent, Department of Health and Human Services (Department), had Daniel Beaton, Jr., Assistant Attorney General, appear on its behalf. Respondent had two witnesses: Mark Logan, Family Independence Manager, and Ann Harris, Long-Term Care Medicaid Worker.

One exhibit was admitted into evidence during the hearing. A 33-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

### **ISSUE**

Did the Department properly determine that Petitioner was not eligible for MA because her assets exceeded the program 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 is a married individual.
2. Petitioner owns a parcel of property in addition to her homestead.

3. The non-homestead property had a state equalized value of \$27,700 in 2019.
4. On [REDACTED] 2020, Petitioner applied for MA from the Department.
5. The Department reviewed Petitioner's application and determined that Petitioner had a countable parcel of property that put her over the asset limit to be eligible for MA.
6. The Department determined that Petitioner's non-homestead property had a value of \$55,400. The Department determined the value of the non-homestead property plus the value of Petitioner's other assets totaled \$56,608.41. Of the \$56,608.41 total, the Department determined that \$28,137.35 was protected for her spouse and \$28,471.06 was countable.
7. The Department reviewed Petitioner's case further to determine whether it could grant her an exception for a non-salable property, and the Department determined that the exception was not available because the property had not been listed for sale at least 90 days prior to the date of her application.
8. The Department also reviewed Petitioner's case to determine whether it could grant her an exception for an undue hardship, and the Department determined that it could not.
9. On May 21, 2020, the Department mailed a Health Care Coverage Determination Notice to Petitioner to notify her that she was not eligible for MA because her assets exceeded the program limit.
10. On June 4, 2020, Petitioner requested a hearing to dispute the Department's decision.

### **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 administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, the Department found Petitioner ineligible for MA because she had assets exceeding the limit. The asset that caused Petitioner to exceed the limit was a non-

homestead property. Petitioner disputes the Department's decision. Petitioner asserts that the non-homestead property was not a countable asset.

The Department must consider an individual's assets when it determines eligibility for SSI-Related MA. BEM 400 (April 1, 2020), p. 1. The asset limit for Medicare Savings Program (MSP) coverage for a group of two is \$11,800. *Id.* at 5. The asset limit for other SSI-related MA, such as traditional coverage for the aged or disabled, is \$3,000 for a group of two. *Id.* at 8-9. Countable assets cannot exceed the applicable program limit. *Id.* at 2. In general, assets are countable if they are both available and not specifically excluded by policy. *Id.* Available means that the applicant or someone in her asset group has the legal right to use or dispose of the asset. *Id.* at 10.

Non-homestead property is countable. *Id.* at 32-34. The value of a non-homestead property is the fair market value, which may be determined by multiplying the state equalized value (SEV) by two. *Id.* at 32-33. In this case, Petitioner owned a non-homestead property with an SEV of \$27,700, and the Department determined the fair market value of the property as \$55,400, by multiplying the SEV by two. The Department properly valued the property in accordance with its policy.

Petitioner asserted that the non-homestead property was not countable because it was non-salable. An asset is non-salable when it has no current fair market value. *Id.* at 14. For property to be deemed non-salable, an applicant for MA must have started to attempt to sell the property at least 90 days before applying for MA. *Id.* at 14-15. In this case, Petitioner did not present any evidence to establish that she started to attempt to sell the property at least 90 days before applying for MA. Rather, Petitioner acknowledged that the property was not put up for sale until after she applied for MA. Since Petitioner did not attempt to sell the property before applying for MA, the Department properly determined that the property was not non-salable.

Petitioner did not present any other evidence to establish that the non-homestead property was not countable. Since Petitioner's non-homestead property was available and not specifically excluded, Petitioner's non-homestead property was countable. The Department properly valued the non-homestead property at \$55,400.

Petitioner's countable assets exceeded the applicable program limit. The non-homestead property had a value of \$55,400. One-half of that value was protected for her spouse. BEM 402 (January 1, 2020), p. 9. Thus, Petitioner's countable assets were still at least \$27,700.

**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 act in accordance with its policies and the applicable law when it determined that Petitioner was not eligible for MA because her assets exceeded the program limit.

IT IS ORDERED the Department's decision is AFFIRMED.

JK/ml



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Jeffrey Kemm  
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**

Kimberly Kornoelje  
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**Petitioner**

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