



GRETCHEN WHITMER
GOVERNOR

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

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DIRECTOR

ROBERT MAGRAW

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Date Mailed: October 19, 2022
MOAHR Docket No.: 20-006795-R
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION

This case was returned to the Michigan Administrative Hearings and Rules (MOAHR) pursuant to an Order Reversing Administrative Hearing Decision in MOAHR Docket No. ██████████ and Remanding for Further Proceedings from the ██████████ Court ██████████ County. The Order states the following:

IT IS HEREBY ORDERED that hearing decision issued by the Michigan Office of Administrative Hearings and Rules (MOAHR) on July 28, 2021 in Docket No. 20-006795 is REVERSED.

IT IS FURTHER ORDERED that this matter is REMANDED to MOAHR to conduct a new administrative hearing. The scope of the hearing is limited to providing the Appellant an opportunity to show he qualified for having his real estate property treated as nonsaleable with \$█████ countable value under *Bridges Eligibility Manual 400* by presenting evidence on whether the set price in the January 13, 2020 listing agreement for the property was its fair market value when he applied for Medicaid in ██████ 2020.

On March 24, 2022, a Notice of Hearing on Remand was issued scheduling a telephone hearing for April 13, 2022. On March 31, 2022, an Order Converting the April 13, 2022 telephone hearing to a telephone prehearing conference was issued. On April 20, 2022, an Order Following Prehearing Conference and Notice of Hearing was issued scheduling a videoconference hearing for June 8, 2022.

After due notice, a videoconference hearing was commenced on June 8, 2022 and was completed August 30, 2022, from Lansing, Michigan. The Petitioner was represented by attorneys David Shaltz and Michelle Biddinger. The Department of Health and Human Services (Department) was represented by Assistant Attorney Generals LeAnn Scott and Cassandra Drysdale-Crown. Bridget Heffron, Department Specialist, appeared as a witness for the Department.

During the June 8, 2022 hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibits A-F and Petitioner's documentary evidence was admitted as Exhibits 1-8. During the August 30, 2022 hearing proceeding Petitioner's additional documentary evidence was admitted as Exhibit 9, pp. 1-24.

ISSUE

Did Petitioner qualify for having his real estate property treated as nonsaleable with a \$ countable value under Bridges Eligibility Manual (BEM) 400 by presenting evidence on whether the set price in the January 13, 2020 listing agreement for the property was its fair market value when he applied for Medicaid (MA) in July 2020?

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 ██████ 2020, an application for long term care (LTC) MA was submitted for Petitioner with attachments, including a summary of Petitioner's assets prepared by Petitioner's attorneys. In part, three properties were listed as assets that were non-saleable: one property in ██████ Township owned by Petitioner and his brother with SEV X 2 ÷ 2 of \$ ██████ and two ██████ Township properties owned by Petitioner and his brother with SEV X 2 ÷ 2 of \$ ██████ and \$ ██████. It was stated that the real estate listing showing Petitioner's half interest in the property had been listed for sale since January 13, 2020 and has remained for sale per BEM 400 p. 15. Copies of the quit claim deeds, the realtor sell contract, and property tax records were included along with the cited provision of BEM policy. (MOAHR Docket No. 20-006795 Exhibit A, pp. 6-17, 47-54, 67-68 and 73-84)
2. The farmland was listed for sale from January 13, 2020 to January 13, 2021 for \$ ██████ (MOAHR Docket No. 20-006795-R Exhibit 2)
3. Petitioner provided letters from multiple realtors and an Officer Collateral Evaluation in support of their contention that the price in the January 13, 2020 listing agreement for the property was its fair market value when Petitioner applied for MA in ██████ 2020. (MOAHR Docket No. 20-006795-R Exhibits 1 and 3-8)
4. On June 22, 2022, a Verification Checklist was issued outlining what verifications were needed for the Department to determine the value of the land. (MOAHR Docket No. 20-006795-R, June 22, 2022 Verification Checklist)
5. On July 22, 2022, Petitioner provided additional verifications. (MOAHR Docket No. 20-006795-R Exhibit 9, pp. 1-24)

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 asserts that the BEM 400 policy addressing jointly owned real property is controlling. Specifically, this portion of BEM 400 states:

Jointly owned real property is only excludable if it creates a hardship for the other owners.

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, July 1, 2020, pp. 12-13.

However, Petitioner has never asserted that this hardship exclusion applies to the property at issue. Rather, Petitioner relies upon the BEM 400 policy addressing non-saleable assets. Specifically, this portion of BEM 400 states:

NON-SALABLE ASSETS

SSI-Related MA Non-Salable Assets

SSI-Related MA Only

Give the asset a \$0 countable value when it has no current market value as shown by one of the following:

- 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 (for example, the property is contaminated with heavy metals). This applies to any assets listed under:

- Investments.
- Vehicles.
- Livestock.
- Burial Space Defined.
- Employment and Training Assets.
- Homes and Real Property (see below)

In addition, for homes, life leases, land contracts, mortgages, and any 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. Count an asset that no longer meets these conditions. The asset becomes countable when a reasonable offer is received. For most assets non-salable is a temporary condition.

For applicants, an actual sale attempt to sell must have started at least 90 days prior to application and must continue until the property is sold. (that is, the property doesn't become nonsalable until the 91st day) For recipients, the asset must have been up for sale at least 30 days prior to redetermination and must continue until the property is sold. An actual sale attempt to sell means the seller has a set price for fair market value, is actively advertising the sale in publications such as local newspaper and is currently listed with a licensed realtor. If after a reasonable length of time has passed without a sale, the sale price may need to be evaluated against the definition of fair market value. The definition of fair market value can be found in the glossary.

BEM 400, July 1, 2020, pp. 14-15.

It is important to note that the non-salable assets policy does not state that it is granting an exclusion of an asset. Rather, this provision gives a \$[REDACTED] countable value to the asset for SSI-Related MA. Therefore, application of the non-salable asset policy provision does not conflict with the provision stating that jointly owned real property is only excludable if it creates a hardship for the other owners. Application of the non-salable asset policy provision only results in a \$[REDACTED] countable value for the asset, rather than complete exclusion of the asset.

Accordingly, pursuant to the Order Reversing Administrative Hearing Decision in MOAHR Docket No. 20-006795 and Remanding for Further Proceedings from the [REDACTED] Court [REDACTED] County, the scope of this remand hearing is limited to providing Petitioner an opportunity to show he qualified for having his real estate property treated as nonsaleable with \$[REDACTED] countable value under *Bridges Eligibility Manual 400* by

presenting evidence on whether the set price in the January 13, 2020 listing agreement for the property was its fair market value when he applied for Medicaid in [REDACTED] 2020.

The Department is correct that no realtor stated that the land had a \$[REDACTED] market value or that some condition on the land made it impossible to sell. (Respondent's Closing Brief, p. 11) However, BEM 400 indicates that a \$[REDACTED] market value can be shown based on a specific condition that causes it to be non-saleable, or in the case of real property, when an actual sale attempt at or below fair market value in the owner's geographic area results in no reasonable offer to purchase. In its closing brief, Respondent acknowledged that Petitioner provided realtor statements and in the opinion of the real estate consultants that farmland's July 2020 listing price of \$[REDACTED] reflected its fair market value. (Respondent's Closing Brief, p. 11)

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's eligibility for MA. Petitioner has presented evidence specifically addressing whether he qualifies for having his real estate property treated as nonsaleable with a \$[REDACTED] countable value under Bridges Eligibility Manual (BEM) 400 by presenting evidence on whether the set price in the January 13, 2020 listing agreement for the property was its fair market value when he applied for Medicaid (MA) in [REDACTED] 2020.

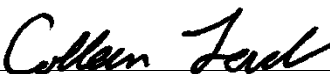
DECISION AND ORDER

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. Re-determine Petitioner's eligibility for MA in accordance with Department policy with real estate property treated as nonsaleable with a \$[REDACTED] countable value under Bridges Eligibility Manual (BEM) 400.

CL/ml



Colleen Lack
Administrative Law Judge

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 Electronic Mail :

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