



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: July 28, 2021
MOAHR Docket No.: 20-006795
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 April 14, 2021. The Petitioner was represented by David L. Shaltz and Michelle Biddinger, Attorneys. The Department of Health and Human Services (Department) was represented by Brian McLaughlin, Assistant Attorney General (AAG). Andrea Bowerman, Assistance Payments Worker (APW) appeared as a witness for the Department.

During the hearing proceeding, The Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-93 and Petitioner's documentation packet was admitted as marked, Exhibits 1-5.

ISSUE

Did the Department properly deny Petitioner's [REDACTED] 2020, 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 long term care (LTC) MA was submitted for Petitioner with attachments. (Exhibit A, pp. 6-11; Exhibit 1, pp. 1-100)
2. Along with the application, a summary of Petitioner's assets was prepared by Petitioner's attorneys. In part, three properties were listed exempt assets due to being non-saleable: one property in [REDACTED] owned by Petitioner and his

brother with SEV X 2 ÷ 2 of \$348,200.00 and two [REDACTED] properties owned by Petitioner and his brother as exempt assets with SEV X 2 ÷ 2 of \$140,000.00 and \$105,200.00. 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. (Exhibit A, pp. 12-17, 47-54, 67-68 and 73-84)

3. On September 15, 2020, a Verification Checklist was issued to Petitioner's attorney requesting verifications by a September 25, 2020 due date. (Exhibit 2, pp. 1-3)
4. On or about September 22, 2020, verifications were submitted including: the original partnership agreement for Ro-Da-Ja Farms dated February 25, 1972; the March 31, 2011 amendment to the partnership agreement; Quit Claim Deeds showing the property that was removed from the partnership and put into the individual names of Petitioner and his brother D.M.; the 2019 tax return for Ro-Da-Ja Farms; and copies of deeds for parcels Petitioner owns. (Exhibit A, pp. 18-46 and 55-66; Exhibit 2, p. 4)
5. The farmland was listed for sale from January 13, 2020 to January 13, 2021 for \$805,000.00 (Exhibit A, pp. 12-17; Exhibit 4, pp. 3-7)
6. On October 7, 2020, a Health Care Coverage Determination Notice was issued stating Petitioner's application for MA was denied because the value of countable assets is higher than allowed for this program. (Exhibit A, pp. 89-92; Exhibit 3, pp. 3-6)
7. On October 13, 2020, a hearing request was filed on Petitioner's behalf contesting the Department's determination. (Exhibit A, pp. 4-5)

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.

The Department requests verification in several situations, including when information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. BAM 130, April 1, 2017, p. 1.

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. BEM 400, October 1, 2020, p. 7. For an SSI-related MA group of one, the asset limit is \$2,000.00. BEM 400, October 1, 2020, pp. 8-9.

BEM 400 policy addresses determining the value of real property:

To determine the fair market value of real property and mobile homes use:

- Deed, mortgage, purchase agreement or contract.
- State Equalized Value (SEV) on current property tax records multiplied by two.
- Statement of real estate agent or financial institution.
- Attorney or court records.
- County records

BEM 400, October 1, 2020, pp. 32-33

BEM 400 also addresses non-saleable 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 non-salable 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, October 1, 2020, pp. 14-15

In this case, the parties dispute whether Petitioner's half interest in the farmland meets the criteria to be considered non-saleable.

The Department noted that the only information regarding the fair market value of the properties submitted with the MA application was based on the SEV. Pursuant to BEM 400, utilizing the SEV multiplied by two is an acceptable way to determine the fair market value. The summary of Petitioner's assets prepared by Petitioner's attorneys listed the farmland properties as exempt assets and included a valuation of each of these properties based on the SEV. Specifically, for each property the attorney provided the calculation of the SEV multiplied by two, then divided by two as Petitioner owns a half interest in each. For the one property in [REDACTED] the SEV X 2 ÷ 2 was \$348,200.00. For the two [REDACTED] properties the SEV X 2 ÷ 2 were \$140,000.00 and \$105,200.00. (Exhibit A, p. 47) The asset summary indicated 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. Verifications were provided such as the quit claim deeds, the realtor sell contract, and property tax records. The SEV X 2 ÷ 2 calculation was also written on the property tax records. (Exhibit A, pp. 12-17, 47-54, and 73-84) Based on the SEVs, Petitioner's half interest in the properties had a fair market value of \$593,400.00. The farmland was listed for sale from January 13, 2020 to January 13, 2021 for \$805,000.00 (Exhibit A, pp. 12-17; Exhibit 4, pp. 3-7) Accordingly, the Department determined that the farmland was not exempt as non-saleable because the listing price exceeded fair market value. (APW Testimony)

Petitioner correctly pointed out that utilizing the SEV multiplied by two is not the only acceptable way to determine the fair market value of real property under the BEM 400 policy. Indeed, the policy lists several other methods, such as the statement of real

estate agent or financial institution. Petitioner asserts that there was a discrepancy regarding the fair market value of the property based on the submitted verifications, specifically the listing of the properties for \$805,000.00, and the SEV. Therefore, Petitioner asserts that the Department should have requested additional verification to allow Petitioner an opportunity to establish that the listing price was at or below fair market value before denying the MA application.

However, Petitioner's argument is not persuasive. Petitioner's attorney was clearly familiar with BEM 400 as it was cited in the asset summary provided at application and copies of portions of this policy were attached. The Department reasonably inferred that Petitioner's attorney was in agreement with basing the fair market value on the SEV because the specific calculation of the SEV multiplied by two, then divided by two as Petitioner only owns a half interest, was included on both the asset summary and the property tax records. Petitioner's attorney did not mention any other available information regarding determining the fair market value of this asset, such as statements from realtors or a report from an evaluation 18 months earlier for purposes of financing drain tile work. As the Department had no reason to believe there was additional information available regarding the fair market value of the property, the Department had no reason to request additional verification. Similarly, Petitioner's argument that the Department's treatment of assets for the MA program was more restrictive than the treatment of assets in the Supplemental Security Income (SSI) program is also not persuasive.


This analysis does not imply that the SEV multiplied by two is the only way, or even the most accurate way, to determine the fair market value of a property. Rather, based on the information submitted for this MA application, the Department properly determined that the farmland did not meet the criteria for a non-saleable asset.

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 denied Petitioner's [REDACTED] 2020, application for MA.

DECISION AND ORDER

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

CL/



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 email

AG-HEFS-MAHS@michigan.gov – Brian
K. McLaughlin
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