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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: August 23, 2021
MOAHR Docket No.: 21-002008
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 May 26, 2021. The Petitioner was represented by David Dobreff, Attorney. [REDACTED], Wife, [REDACTED] Sister, and [REDACTED], Brother-in-Law, appeared as witnesses for Petitioner. The Department of Health and Human Services (Department) was represented by Dan Beaton, Assistant Attorney General (AAG). Amy Schantz, Eligibility Specialist (ES), appeared as a witness for the Department.

During the hearing proceeding, the Department’s Hearing Summary packet was admitted as Exhibit A, pp. 1-156.

ISSUE

Did the Department properly determine Petitioner’s eligibility 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 August 20, 2015, Petitioner and his wife signed a Mortgage Note for [REDACTED] [REDACTED] for a property at [REDACTED] The principal was [REDACTED] Payments of [REDACTED] were to be made monthly for [REDACTED] years, at which time a balloon payment would be due for the entire balance owing on the loan at that time. (Exhibit A, pp. 17 and 82)

2. On an Assets Declaration Patient and Spouse signed by Petitioner's wife dated September 18, 2020, there was no disclosure of any look back transaction in Section 3; and no disclosure of a land contract, mortgage, or notes payable to household member for the property at [REDACTED] (Exhibit A, pp. 27-28)
3. Petitioner's date of admission/enrollment for the MI Choice Waiver was October 9, 2020. (Exhibit A, pp. 49-53)
4. On October 14, 2020, a Verification Checklist was issued, in part requesting verification of all household assets, by an October 26, 2020 due date. (Exhibit A, pp. 61-66)
5. On an Assets Declaration Patient and Spouse signed by Petitioner's wife dated [REDACTED] 2020, there was no disclosure of any look back transaction in Section 3; and no disclosure of a land contract, mortgage, or notes payable to household member for the property at [REDACTED]. (Exhibit A, pp. 29-30)
6. On an October 16, 2020 Health Care Coverage Supplemental Questionnaire, a loan to [REDACTED] was listed for [REDACTED] receiving a monthly payment of [REDACTED]. (Exhibit A, pp. 31-33)
7. On October 20, 2020, a Verification Checklist was issued, in part indicating the Application for Health Coverage & Help Paying Costs received on October 16, 2020 was blank and proof of assets was still pending for the initial asset assessment (IAA), and requesting a completed application with requested proofs by an October 30, 2020 due date. (Exhibit A, pp. 67-72)
8. On or about October 29, 2020, an Application for Health Coverage & Help Paying Costs, was filed on Petitioner's behalf. (Exhibit A, pp. 3 and 34-48)
9. On November 13, 2020 an IAA Notice was issued. (Exhibit A, pp. 73-75)
10. On November 17, 2020, a Verification Checklist was issued, in part requesting verification of the loan to [REDACTED] (Exhibit A, pp. 76-81)
11. A November 25, 2020, case note states that Petitioner and his wife sold their home at [REDACTED] on August 20, 2015 for [REDACTED] to [REDACTED] [REDACTED] which was just prior to the look back period. The contract indicates the final payment was due in September 2020 with a balloon payment due in September 2020. (Exhibit A, p. 152)
12. On November 30, 2020, a Health Care Coverage Determination Notice was issued to Petitioner stating MA was approved for November 1, 2020 but indicating there would be a divestment penalty from October 1, 2020 through June 6, 2021, based on assets or income being transferred for less than their fair market value. Specifically, it was noted that the home on [REDACTED] was sold for [REDACTED] below fair market value and was a divestment. (Exhibit A, pp. 83-92)

13. On December 30, 2020, a Verification Checklist was issued requesting several verifications, including proof of receipt of a balloon payment on the mortgage note with [REDACTED] for the property at [REDACTED], proof of the deposit, and a complete explanation of the spending of the funds. The due date was January 11, 2021. (Exhibit A, pp. 12-16 and 99-104)
14. On January 6, 2021, the Department received a request to extend the deadline for the Verification Checklist, which was granted. (Exhibit A, pp. 4 and 106)
15. On January 13, 2021, [REDACTED] signed an Amended Mortgage Note Originally Dated September 28, 2017. It was stated that on November 11, 2017, the mortgager paid the [REDACTED] [REDACTED] at the [REDACTED] request and made [REDACTED] monthly payments toward a [REDACTED] balance outstanding as of September 28, 2017, and occasionally paid more. It was stated that the interest rate changed and the note was then secured by a lien on Stock Certificate Number [REDACTED], known as the [REDACTED]. Further, the stated purpose of the amended note was to remove Petitioner as a mortgagee, to secure this note against the above-mentioned property instead of the prior note, and it was also at the request of proof by the Department. (Exhibit A, p. 22)
16. On January 14, 2021, the Department received the documentation in response to the Verification Checklist including the Amended Mortgage Note Originally Dated September 28, 2017, the August 20, 2015 Mortgage Note, and an Amortization Schedule. (Exhibit A, pp. 110-132)
17. On February 9, 2021, a Health Care Coverage Determination Notice was issued to Petitioner stating that the Department received additional information on January 14, 2021 about the contract with [REDACTED] for the [REDACTED] property. The contract was amended on September 28, 2017, which was within the 60 month look back period from the application date. The contract was determined to be a transfer of assets. Per the amortization schedule submitted on January 14, 2021, the outstanding balance at the time of application on October 29, 2020, was [REDACTED]. The uncompensated value, per BEM 405, is [REDACTED]. (Exhibit A, pp. 18-21 and 133-140)
18. The Department determined that the divestment of [REDACTED] would result in a divestment penalty of 3 months and 18 days to be served after the first divestment penalty. The second divestment penalty would start June 7, 2021 and end September 25, 2021. (Exhibit A, pp. 4 and 150)
19. On or about April 5, 2021, a hearing request was filed on Petitioner's behalf contesting the Department's determination. Additional [REDACTED] included. (Exhibit A, pp. 7-22)

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.

BEM 405 addresses MA Divestment. In part, this policy states:

Divestment results in a penalty period in MA, **not** ineligibility.

Divestment means a transfer of a resource (see *resource defined* in this item and in glossary) by a client or his spouse that are all of the following:

- Is within a specified time; see *look back period* in this item.
- Is a transfer for *less than fair market value*; see definition in glossary.
- Is not listed in this item under *transfers* that are not divestment.

Note: See *annuity not actuarially sound and joint owners and transfers* in this item and BEM 401 about special transactions considered transfers for less than *fair market value*.

BEM 405, July 1, 2020, p. 1.

On November 30, 2020, a Health Care Coverage Determination Notice was issued to Petitioner stating MA was approved for November 1, 2020 but indicating there would be a divestment penalty from October 1, 2020 through June 6, 2021, based on assets or income being transferred for less than their fair market value. Specifically, it was noted that the home on [REDACTED] was sold for [REDACTED] below fair market value and was a divestment. (Exhibit A, pp. 83-92)

However, on January 14, 2021, the Department received additional documentation in response to a Verification Checklist including the Amended Mortgage Note Originally Dated September 28, 2017, the August 20, 2015 Mortgage Note, and an Amortization Schedule. (Exhibit A, pp. 110-132) The Amended Mortgage Note Originally Dated September 28, 2017 was signed by [REDACTED] on January 13, 2021. It was stated that on November 11, 2017, the mortgager paid the [REDACTED] [REDACTED].

at the [REDACTED] request and made [REDACTED] monthly payments toward a [REDACTED] balance outstanding as of September 28, 2017, and occasionally paid more. It was stated that the interest rate changed and the note was then secured by a lien on Stock Certificate Number [REDACTED] known as the [REDACTED]. Further, the stated purpose of the amended note was to remove Petitioner as a mortgagee, to secure this note against the above-mentioned property instead of the prior note, and it was also at the request of proof by the Department. (Exhibit A, p. 22)

On February 9, 2021, a Health Care Coverage Determination Notice was issued to Petitioner stating that the Department received additional information on January 14, 2021 about the contract with [REDACTED] for the [REDACTED] property. The contract was amended on September 28, 2017, which was within the 60 month look back period from the application date. The contract was determined to be a transfer of assets. Per the amortization schedule submitted on January 14, 2021, the outstanding balance at the time of application on October 29, 2020, was [REDACTED]. The uncompensated value, per BEM 405, is [REDACTED] (Exhibit A, pp. 18-21 and 133-140)

Petitioner contests the February 9, 2021, determination. Petitioner asserts that there should be no divestment penalty because the original transaction on August 20, 2015 was outside the 5-year lookback period; the 2017 amendment was an amendment to the original contract and not a new contract; the parties switched the secured interest and no additional money was given from Petitioner and his wife to the [REDACTED]. (Exhibit A, p. 10)

The Department determined that the Amended Mortgage Note Originally Dated September 28, 2017 was a transfer of assets per BEM 400. (Exhibit A, p. 4) BEM 400 states:

Mortgages

A mortgage is a loan that a bank or mortgage lender gives to a buyer to finance the purchase of a house. Mortgages are usually recorded to notify the public that the lender has a lien against the property.

The value of a mortgage is the amount it can be sold for in the holder's geographic area on short notice (usually at a commercial discount rate) minus any lien on the property.

A mortgage may be treated as a transfer of assets unless all the following are true:

- The payment schedule is actuarially sound; and
- The payments are made in equal monthly amounts during the term of the agreement with no deferral of payments and no balloon payments; and

- The mortgage contract must prohibit the cancellation of the balance upon the death of the lender.

See **BEM 405 Uncompensated Value** to determine the value of any mortgage which does not meet all of the bullets in this policy.

Promissory Notes/Loans

A promissory **note** is a written promise to pay a certain sum of money to another person at a specified time. Promissory notes are loans. The promissory note may call for installment payments over a period of time (installment note). The note is an asset to the lender. For eligibility the value of the note is the outstanding balance due as of the date of application for long term care, home help, waiver services, or home health services.

The purchase of a promissory note or loan, **is a** transfer of assets. The purchaser has transferred cash in exchange for a written promise to be paid back by the borrower. This transfer must be reviewed to determine if the purchaser has received *fair market value*. A note that cannot be sold or transferred to another party does not meet the definition of *fair market value* and must be reviewed as a divestment. See the glossary for definitions of *fair market value* and *arm length transaction*. In addition to the *fair market value* requirement the purchase of a promissory note is a transfer of assets for less than *fair market value* unless all the following are also true:

- The repayment schedule is actuarially sound; and
- The payments are made in equal monthly amounts during the term of the agreement with no deferral of payments and no balloon payments; and
- The note must prohibit the cancellation of the balance upon the death of the lender.

See *BEM 405, Uncompensated Value*, to determine the value of any promissory note or loan as a transfer for less than *fair market value*.

Note: Life expectancy tables used to determine actuarial soundness are in BEM 405.

BEM 400, pp. 42-43

Additionally, BEM 405 states:

The uncompensated value of a promissory note, loan, or mortgage is the outstanding balance due on the date of application.

BEM 405, p. 15

The Department noted that the amendment was done within the 5-year lookback period and updated the terms. This constitutes a new note. The contract did not meet the second and third bullets of the BEM 400 policy addressing mortgages. The loan could not be paid off in equal monthly payments during the term of the agreement, therefore, a balloon payment would be due. Further, when a mortgage contract does not prohibit cancellation of the balance upon death of the lender, it is considered a transfer of assets and is subject to review for divestment. (Exhibit A, p. 4)

Per the amortization schedule submitted on January 14, 2021, the outstanding balance on the date of application was [REDACTED]. Accordingly, per BEM 405, the uncompensated value is [REDACTED] this resulted in a penalty of 3 months and 18 days for this divestment. (Exhibit A, p. 4)

The Department's argument that this was a new loan was persuasive. The Amended Mortgage Note significantly changed the terms of the original August 20, 2015 Mortgage Note. The interest rate was lowered to 5% and the principal was now [REDACTED] after the [REDACTED] paid Petitioner and his wife [REDACTED]. Petitioner was removed as a mortgagee. The Amended Mortgage Note also started a new 5-year term. (Exhibit A, p. 22) This transaction did occur within the 5-year lookback period; therefore, it was subject to review for divestment.

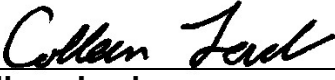
The Department noted that the specified monthly payments over the 5-year term would not allow for the entire [REDACTED] loan to be repaid within that contract term. Rather than specifying what would occur at the end of the 5-year, it was stated that the Note could be amended or continued at the desire of both parties. This does not meet the second bullet from the above cited BEM 400 policy. Further, there was no provision in the Amended Mortgage Note prohibiting the cancellation of the balance upon the death of the lender. This does not meet the third bullet from the above cited BEM 400 policy. Therefore, the Department properly determined the uncompensated value by utilizing the amortization schedule submitted on January 14, 2021, which showed the outstanding balance on the date of application was [REDACTED] This resulted in a penalty of 3 months and 18 days for this divestment. (Exhibit A, p. 4)

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 Petitioner's eligibility for MA.

DECISION AND ORDER

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

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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