



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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██████████, MI ██████████

Date Mailed: September 17, 2021
MOAHR Docket No.: 21-002873
Agency No.: ██████████
Petitioner: ██████████ ██████████

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 August 19, 2021, from Lansing, Michigan. The Petitioner was represented by his Attorney, Travis Dafoe, P#73059 and his daughter, Michelle Louwars. The Department of Health and Human Services (Department) was represented by Assistant Attorney General, H. Daniel Beaton, Jr. P#43336 and Melissa Birdman, Eligibility Specialist.

ISSUE

Did the Department properly deny the Petitioner's application for Medical Assistance (MA) due to excess assets?

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 ██████████ ██████████ 2021, the Department received a MA application and required verifications for determining eligibility for MA from the Petitioner. Department Exhibit 1, pgs. 47-87.
2. On March 3, 2021, the Department Caseworker sent the Petitioner a request for additional information through a Verification Checklist, DHS 3503, that was due on March 15, 2021, of shareholder's agreement and verification that the property is listed for sale, duration, when, any reasonable offers made. Department Exhibit 1, pgs. 99-100.

3. On March 3, 2021, the Petitioner's Attorney answered that there is no shareholders agreement, and the property is not up for sale just individual lots and the Petitioner's brother does not want to sell. Department Exhibit 1, pgs. 100-106.
4. On March 4, 2021, the Department Caseworker sent the Petitioner a request for additional information through a Verification Checklist, DHS 3503, that was due on March 15, 2021, of loan agreement and verification of the balance sheet for the contested property. Department Exhibit 1, pgs. 113-114.
5. On March 15, 2021, the Department sent the Petitioner a notice that his MA application was denied due to excess assets.
6. On March 20, 2021, the Petitioner's Attorney submitted additional information and verification that the parcels were not saleable and requested information about the Petitioner's loan to the company. Department Exhibit 1, pgs. 107-112 and 115-119.
7. On June 1, 2021, the Department received a hearing request from the Petitioner, contesting the Department's negative action.

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 received a MA application and required verifications for determining eligibility for MA from the Petitioner on January 29, 2021. Department Exhibit 1, pgs. 47-87. On March 3, 2021, the Department Caseworker sent the Petitioner a request for additional information through a Verification Checklist, DHS 3503, that was due on March 15, 2021, of shareholder's agreement and verification that the property is listed for sale, duration, when, any reasonable offers made. Department Exhibit 1, pgs. 99-100. On March 3, 2021, the Petitioner's Attorney answered that there is no shareholders agreement, and the property is not up for sale just individual lots and the Petitioner's brother does not want to sell. Department Exhibit 1, pgs. 100-106.

On March 4, 2021, the Department Caseworker sent the Petitioner a request for additional information through a Verification Checklist, DHS 3503, that was due on March 15, 2021, of loan agreement and verification of the balance sheet for the contested property. Department Exhibit 1, pgs. 113-114. On March 15, 2021, the Department sent the Petitioner a notice that his MA application was denied due to excess assets. On March 20, 2021, the Petitioner's Attorney submitted additional information and verification that the parcels were not saleable and requested information about the Petitioner's loan to the company. Department Exhibit 1, pgs. 107-112 and 115-119. On June 1, 2021, the Department received a hearing request from the Petitioner, contesting the Department's negative action. BEM 400, 401, and 402.

BEM 400, pg. 14-15.

**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 does not 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.

Note: The non-salable asset policy does **not** apply to the Initial Asset Assessment.

The Department has met their burden that the Petitioner has excess assets, which makes him ineligible for MA benefits. The Petitioner and his brother are owners of property under Oakwood Acres Development Company. The Petitioner's brother does not want to sell the property. The property cannot be sold without his consent. Department Exhibit 1, pg. 103. The Petitioner has given a loan to the Oakwood Acres Development Company in the amount of \$331,000, which is also a countable asset with a promissory note. In addition, the whole property was not listed for sale 90 days before the MA application was submitted and has not continued until the property was sold. Parcels available for sale does not meet the requirement of Department policy.

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 acted in accordance with Department policy when it determined that the Petitioner had excess assets for MA based on his application submitted [REDACTED] 2021.

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



CF/nr

Carmen G. Fahie
Administrative Law Judge
for Elizabeth Hertel, 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

Counsel for Respondent

H. Daniel Beaton, Jr.- via electronic mail
P.O. Box 30758
Lansing, MI 48909

Huron County DHHS- via electronic mail

BSC2- via electronic mail

C. George- via electronic mail

EQAD- via electronic mail

DHHS

Julie M Booms
1911 Sand Beach Road
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Authorized Hearing Rep.

Michelle Louwers- via first class mail
7068 East Park St Box 2052
Caseville, MI 48725

Petitioner

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