



STATE OF MICHIGAN

GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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

Date Mailed: June 24, 2022  
MOAHR Docket No.: 21-005382  
Agency No.: [REDACTED]  
Petitioner: [REDACTED] [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Aaron McClintic

**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 hearing was held on December 15, 2021, February 17, 2022, and April 14, 2022, via zoom videoconference. The Petitioner was represented by Attorney [REDACTED] [REDACTED]. The Department of Health and Human Services (Department) was represented by Assistant Attorney General Geraldine Brown. Patricia McLain, Bridget Heffron Medical Eligibility Policy Specialist and Attorney Carmencita Fulgado-Taylor appeared and testified for the Department. The record was left open to allow the parties to submit briefs following hearing. Both parties’ attorneys submitted briefs that were reviewed. Department Exhibit 1, pp. 1-489 was received and admitted. Petitioner Exhibit A, pp. 1-37 was received and admitted.

**ISSUE**

Did the Department properly deny Petitioner’s Long Term Care Medical Assistance (MA-LTC) application 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 [REDACTED] [REDACTED] [REDACTED] Petitioner applied for MA-LTC and submitted an Assets Declaration.
2. On September 2, 2021, Petitioner submitted a Schedule of Assets spreadsheet.
3. On September 22, 2021, a Verification Checklist was issued requesting assets verifications.

4. On [REDACTED] [REDACTED] [REDACTED] Petitioner submitted a hearing request for untimely processing of the application.
5. On October 19, 2021, a Verification Checklist was issued to Petitioner requesting asset verifications for Abbot Road Mini Storage.
6. On November 2, 2021, a Health Care Coverage Determination was issued to Petitioner informing her that MA-LTC was denied due to excess assets. (Ex. 1, pp. 447-449)
7. On November 4, 2021, Petitioner withdrew the [REDACTED] [REDACTED] [REDACTED] hearing request for untimely processing of application.
8. On [REDACTED] [REDACTED] [REDACTED] Petitioner requested hearing disputing the denial of MA-LTC due to excess assets.
9. Petitioner's spouse [REDACTED] [REDACTED] owns Abbot Road Mini Storage which consists of land where storage units and a business office sit and the business accounts for the business. The storage units generate income
10. The Department determined that Abbott Road Mini Storage was a countable asset.
11. Petitioner's spouse [REDACTED] [REDACTED] is part owner of an Oak Tree Development LLC which consists of rental properties that have rental income and vacant land parcels that do not produce any rental income.
12. The Oak Tree Development LLC Operating Agreement (Ex. 1, pp. 433-443) outlines the ownership arrangement and other parameters of the company.
13. The Department attributed 50% of the value of the value of Oak Tree Development LLC to Paul Crandall with a value of \$ [REDACTED] as a countable asset.

### **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.

## **Overview of Asset Policy**

Countable assets **cannot** exceed the applicable asset limit. Not all assets are counted. Some assets are counted for one program, but not for another program. Some programs do **not** count assets; see **Programs with No Asset Test** in this item.

Consider both of the following to determine if an asset is countable, and how much to count:

Availability:

See **Available in this item**.

See **Jointly Owned Assets** in this item.

See **Non-Salable Assets** in this item.

See **Exclusions** in this item.

An asset is countable if it meets the availability tests and is **not** excluded. BEM 400

## **AVAILABLE**

### **FIP, RCA, SDA, G2U, G2C, RMA, SSI-Related MA Only, CDC and FAP**

An asset must be available to be countable. **Available** means that someone in the asset group has the legal right to use or dispose of the asset.

This does **not** apply to trusts. There are special rules about trusts. See **Trusts** in this item for FIP, RCA, SDA, CDC and FAP. See BEM 401, MA-TRUST policy.

Assume an asset is available unless evidence shows it is **not** available. BEM 400

## **Real Property and Employment Assets**

### **SSI-Related MA Only and FAP**

Employment-related assets such as farmland and the building where a business is located might be excluded; see **Employment Asset Exclusions** in this item. BEM 400

## **Business Account Exclusion**

### **FIP, RCA, SDA, G2U, G2C, RMA, SSI-Related MA Only, CDC and FAP**

Use this exclusion only if the funds are **not** commingled with countable assets and **not** in time deposits.

Exclude a savings, share, checking, or draft account used **solely** for the expenses of a business. Continue the exclusion while the business is not operating, provided the person intends to return to the business. BEM 400

## **Income-Producing Real Property**

### **SSI-Related MA Only**

Exclude up to \$6,000 of equity in income-producing real property if it produces annual countable income equal to at least 6 percent of the asset group's equity in the asset.

Countable income is total proceeds minus actual operating expenses.

Use the Employment Asset Exclusions in this item for property used in a business or trade. BEM 400

## **Limited Liability Companies**

### **SSI-Related MA Only**

Count any assets in a Limited Liability Company (LLC). BEM 400

## **EMPLOYMENT AND TRAINING ASSETS**

### **SSI-Related MA Only and FAP**

Employment assets are those assets commonly used in a business, a trade or other employment. Examples:

Farmland.

Tools, equipment, and machinery.

Inventory, livestock.

Savings or checking account used solely for a business.

The building a business is located in.

Vehicles used in business such as a farm tractor or delivery truck. It does **not** include vehicles used solely for transportation to and from work.

Such assets might also be used in education or job training. BEM 400

### **General Employment Exclusion**

#### **SSI-Related MA Only and FAP**

Exclude employment assets (see above) that:

Are required by a person's employer.

Produce income directly through their use.

Such assets remain excluded when a person is unemployed only if the person intends to return to that type of work. BEM 400

### **(a) Exclusions from resources**

In determining the resources of an individual (and his [eligible spouse](#), if any) there shall be excluded—

**(1)**

the home (including the land that appertains thereto);

**(2)**

**(A)**

household goods, personal effects, and an automobile, to the extent that their total value does not exceed such amount as the Commissioner of Social Security determines to be reasonable; and

**(B)**

the value of any burial space or agreement (including any interest accumulated thereon) representing the purchase of a burial space (subject to such limits as to size or value as the Commissioner of Social Security may by regulation prescribe) held for the purpose of providing a place for the burial of the individual, his spouse, or any other member of his immediate family;

**(3)**

other property which is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion, as determined in accordance with and subject to limitations prescribed by the Commissioner of Social Security, except that the Commissioner of Social Security shall not establish a limitation on property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is used in a trade or business or by such individual as an employee; 42 USC 1382b(a)(1-3)

## A. Policy Principles

### **1. The Exclusion**

The properties described in 2, 3, and 4 below are excluded as essential to self-support regardless of value or rate of return. However, they must be in current use or, if not in use for reasons beyond the individual's control, there must be a reasonable expectation that the required use will resume.

### **2. Trade or Business Property**

Property essential to self-support used in a trade or business is excluded from resources regardless of value or rate of return effective May 1, 1990. See [SI 01130.503](#) for periods of eligibility before that date.

### **3. Government Permits**

Government permits represent authority granted by a government agency to engage in income producing activity. Examples are commercial fishing permits granted by a State Commerce Commission and tobacco crop allotments issued by the U.S. Department of Agriculture.

### **4. Personal Property Used by An Employee**

Personal property used by an employee for work is excluded from resources beginning May 1, 1990. For periods before that date such items were excluded if they were required by the individual's employer. Excluded items include tools, safety equipment, uniforms, etc. POMS SI 01130.501.A.2

In this case, the chief in dispute is whether Petitioner is over the asset limit for MA-LTC due to businesses owned by [REDACTED] [REDACTED] Petitioner's community spouse. [REDACTED] [REDACTED] has ownership interests in several business. Petitioner's position is that [REDACTED] [REDACTED] ownership interest in Abbott Road Mini Storage should be excluded under the General Employment Exclusion and not the Income-Producing Real Property exclusion. Petitioner argues that Mr. [REDACTED] ownership interest in Abbot Road Mini Storage meets both criteria under this policy because it is property required by a person's employer and it produces income. Mr. [REDACTED] would be considered self-employed for this business because he is the sole owner. Petitioner's position is that the land and the buildings located on the property are required because without them there would be no business. The second criteria for the General Employment Exclusion is that the property produces income through its use. Abbot Road Mini Storage does generate income in the form of rent. Petitioner argues that Mr. [REDACTED] ownership of the land that the storage units are located on and the office for the storage unit business are analogous to farmland that is specifically cited as an example under the Real Property and Employment assets policy. Petitioner argues that the General Employment Exclusion policy refers to property broadly which should encompass both real property and personal property.

With regard to the Oak Tree Development LLC assets owned by [REDACTED] [REDACTED] the Petitioner's position is that those assets are unavailable to the Mr. [REDACTED] because he has no right to withdraw or receive any payments or distributions from the company according to the terms of the LLC Membership Agreement. Petitioner points to the definition of "available" in Department policy that states the assets are available if someone had the legal right to use or dispose of the asset. In the alternative, Petitioner

argues that if Oak Tree Development is found to be available then it too should fall under the General Employment Exclusion.

The Department position is that [REDACTED] ownership interest in the Abbott Road Mini Storage business falls under the Income-Producing Real Property exclusion and Petitioner is only entitled to a \$6,000 exclusion for each piece of property that generates 6% income. The Department position about the General Employment Exclusion is that [REDACTED] ownership interest in the Abbott Road Mini Storage business is not “so essential” to the means of self-support of Mr. and Mrs. [REDACTED] because Mr. [REDACTED] has \$[REDACTED] in yearly income and several million dollars in assets. The Department also argues that the General Employment Exclusion is for personal property and not real property and therefore [REDACTED] ownership of real property and buildings for the Abbot Road Mini Storage business cannot be excluded under the General Employment Exclusion. The Department cites; 42 USC 1396r-5, 42 USC 1382b(a)(3), 20 CFR 416.1210, 42 CFR 435.845 and POMS SI 01130.500.A. in support of their position

The Department position with regard to the Oak Tree Development LLC assets is that they should be countable because Mr. [REDACTED] has an ability to sell his interest in the LLC according to the LLC Membership Agreement Article V which states that “Each member shall have the power, with or without the consent of the other member, to substitute for themselves in the Company a person who is not a member of the company. The substitution shall confer on the substituted member all the attributes of the transferring Member’s Interest in the Company. Such person shall be admitted as a substitute member and shall be entitled to all the rights and powers of a Member. The substitute member shall also thereafter be subject to all the restrictions and liabilities of a member” and therefore those assets are available to him. The Department deemed Mr. [REDACTED] to have a 50% ownership interest in the Oak Tree Development LLC and attributed 50% of the value of the assets to him totaling \$[REDACTED]. In addition, the Department argues that Oak Tree Development assets are not income producing property because no rent is collected on some of the vacant lots owned by the LLC. The Department makes the same arguments regarding why the General Employment Exclusion does not apply to Oak Tree Development LLC as they did for the Abbot Road Mini Storage business. The Department also relies on the specific policy directive to count any assets in a Limited Liability Corporation in support of their position that the Oak Tree Development LLC should be a countable asset. BEM 400

With regard to the Abbot Road Mini Storage Business, Department policy under Real Property and Employment assets states the following: “Employment-related assets such as farmland and the building where a business is located might be excluded; see **Employment Asset Exclusions** in this item.” BEM 400 Department Policy under **EMPLOYMENT AND TRAINING ASSETS states the following:** “Employment assets are those assets commonly used in a business, a trade or other employment. Examples:  
Farmland.  
Tools, equipment, and machinery.  
Inventory, livestock.

Savings or checking account used solely for a business.

The building a business is located in.

Vehicles used in business such as a farm tractor or delivery truck. It does **not** include vehicles used solely for transportation to and from work.

Such assets might also be used in education or job training.” BEM 400 Farmland is real property, so this policy refers to real and personal property. The land and buildings for Petitioner’s husband’s storage unit business is comparable to farmland and the land and buildings are necessary for the business because without that land and buildings there would be no business. The Department argues that the value of the business should be taken into consideration along with the applicants overall financial picture when evaluating whether the asset is necessary for self-support. Nothing in policy requires that evaluation or gives guidance regarding how that evaluation would be completed. To allow valuable farmland to be excluded but require that land used for a storage unit business be countable is not supported by policy and would be unfair. The Abbot Road Mini Storage Business owned by Petitioner’s husband falls under the General Employment Exclusion because the assets are required by the person’s employer and generate income and therefore the assets related to that business should be excluded. BEM 400 The business accounts for the Abbott Road Mini Storage business are also excluded under Business Account Exclusion.

With regard to the Oak Tree Development LLC assets, the Operating Agreement for Oak Tree Development has a provision 3.4 No Right of Withdrawal that states “The Members shall not have any right to withdrawal or any right to receive any payment or distribution from the Company on any actual or purported withdrawal. The Members agree not to withdraw, and they waive any right of withdrawal and any right to receive payment or distribution on withdrawal provided for under the Act.” The Operating Agreement under Article V Disposition of Membership Interests gives [REDACTED] [REDACTED] the ability to substitute someone in his place who would then have the responsibilities, liabilities, and restrictions of [REDACTED] [REDACTED]. The heading for this article specifically references “Disposition”, that word connotes an ability to dispose of the member’s interest by way of sale. The definition of available in Department policy requires that an asset must be available to be countable and available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400 Paul Crandall does have the legal right to dispose of his interest in the Oak Tree Development LLC therefore those assets are available to him and therefore are available pursuant to the Department definition of available.

The land and buildings for Petitioner’s husband’s real estate holding company business Oak Tree Development LLC is comparable to farmland and the land and buildings are necessary for the business because without that land and buildings there would be no business. The Department argues that the value of the business should be taken into consideration along with the applicants overall financial picture when evaluating whether the asset is necessary for self-support. Nothing in policy requires that evaluation or gives guidance regarding how that evaluation would be completed. To allow valuable farmland to be excluded but require that land used for a real estate holding company business be countable is not supported by policy and would be unfair. The Oak Tree

Development LLC business partially owned by Petitioner's husband falls under the General Employment Exclusion because the assets are required by the person's employer and generate income and therefore the assets related to that business should be excluded. BEM 400 The Department points to a policy provision that flatly directs to count any assets in a Limited Liability Company (LLC). Nothing in policy dictates that this provision supersedes other parts of policy.

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 denied Petitioner's MA-LTC application due to excess assets.

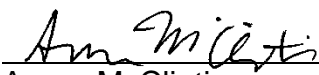
### **DECISION AND ORDER**

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. Exclude the assets from Abbott Road Mini Storage and Oak Tree Development LLC.
2. Reprocess Petitioner's MA-LTC application going back to the date of application.
3. Activate MA-LTC coverage if Petitioner is found otherwise eligible.

AM/nr

  
\_\_\_\_\_  
Aaron McClintic  
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 :**

**Counsel for Respondent**

Geraldine A. Brown  
Michigan Department of Attorney  
General, Health, Education & Family  
Services Division  
P.O. Box 30758  
Lansing, MI 48909

**DHHS**

Nicolette Vanhavel  
235 S Grand Ave Ste 1207  
Lansing, MI 48933

**Interested Parties**

SSPC-Central  
D. Smith  
EQAD

**Via First Class Mail :**

**Petitioner**

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

**Counsel for Petitioner**

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