



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: March 3, 2023
MOAHR Docket No.: 22-005367
Agency No.: ██████████
Petitioner: ██████ ██████

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on February 2, 2023, from Lansing, Michigan. Petitioner was represented by his attorney, David L. Shaltz. ██████ ██████ testified on behalf of Petitioner. The Department was represented by Assistant Attorney General Geraldine A. Brown. Mark Logan testified on behalf of the Department.

ISSUE

Did the Department of Health and Human Services (Department) properly deny Petitioner's 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 ██████████ ██████ 2022, the Department received Petitioner's application for Medical Assistance (MA) including a request for long term care. Exhibit A, pp 6-10.
2. Petitioner reported an ownership interest in real property in adjacent parcels of land designated at Parcel 08-51-110-200-08 with fair market value of \$398,800, and Parcel 08-15-002-300-01 with a fair market value of \$435,400. Exhibit A, pp 42-43.
3. Respondent reported having cash assets in three bank accounts totaling \$2,031.75. Exhibit A, pp 29-34.
4. On November 10, 2022, the Department notified Petitioner that he was not eligible for Medical Assistance (MA). Exhibit A, p 64.

5. On November 14, 2022, the Department received Petitioner's request for a hearing protesting the denial of Medical Assistance (MA). 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 through 42 USC 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 through 42 CFR 420.25. The Department administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.103 through MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

Assets means cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees, and fences. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (April 1, 2022), pp 1-11.

A homestead is where a person lives that they own, is buying or holds through a life estate. It includes the home in which they live, the land on which the home is located, and any other related buildings on the adjoining land. Adjoining land means land which is not completely separated from the home by land owned by someone else. Adjoining land may be separated by rivers, easements, and public rights-of-way (example: utility lines and roads). A homestead does not include income producing property located on the homestead property. BEM 400, p 35.

The Department will exclude the value of one homestead for an asset group. BEM 400, p 35.

The hearing record supports a finding that Petitioner has an ownership interest in two adjoining parcels of real property that are not separated by land owned by someone else. If it were not necessary for Petitioner to receive long term care at a nursing facility, Petitioner would be living at his home located on one of the parcels, and the other parcels fits the definition of adjoining land. The hearing record supports a finding that when Petitioner reported his ownership interest in the two adjoining lands that neither parcel of land was income producing.

Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the real properly reported by Petitioner on his application for MA

benefits fit the definition of one homestead as defined by BEM 400, and both parcels are excluded from the asset group.

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 did not act in accordance with Department policy when it denied Petitioner's [REDACTED] [REDACTED] 2022, application for Medical Assistance (MA).

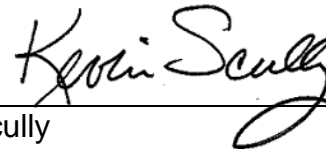
DECISION AND ORDER

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:

Reprocess the [REDACTED] [REDACTED] 2022, application for Medical Assistance (MA) and initiate a determination of the Petitioner's eligibility for Medical Assistance (MA) effective September 1, 2022.

KS/nr



Kevin Scully
Administrative Law Judge
Michigan Office of Administrative Hearings
and Rules (MOAHR)

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

