



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: November 3, 2023
MOAHR Docket No.: 23-005980
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

On September 14, 2023, Petitioner, [REDACTED] requested a hearing to dispute a Medical Assistance (MA) eligibility determination. As a result, a hearing was scheduled to be held on November 1, 2023, pursuant to MCL 400.9; 42 CFR 431.200 to 431.250; and Mich Admin Code, R 792.11002. Petitioner appeared with her attorney, Catherine Jacobs. Respondent, Department of Health and Human Services (Department), was represented by Kelly Carter, Assistant Attorney General, and Respondent had Kerri Scott, Eligibility Specialist, and Bridget Heffron, Medicaid Eligibility Policy Specialist, appear as its witnesses. Neither party had any additional witnesses.

Twenty-three exhibits were admitted into evidence during the hearing.

- Exhibit A Hearing Summary
- Exhibit B Hearing Request
- Exhibit B-1 [REDACTED] Estate, LLC Operating Agreement
- Exhibit C LTC Application
- Exhibit D Retroactive Application
- Exhibit E Liquid Asset Summary
- Exhibit F Real Property Summary
- Exhibit G Asset Summary
- Exhibit H LMCU Statement for [REDACTED]
- Exhibit I Asset Chart
- Exhibit J Homestead Value
- Exhibit K LMCU Statement for [REDACTED]
- Exhibit L Bank of America Activity for [REDACTED]
- Exhibit M Bank of America Activity for [REDACTED]
- Exhibit N Transamerica Check
- Exhibit O 2021 Property Record
- Exhibit P 2023 Property Record

Exhibit Q Deed
Exhibit R [REDACTED] Affidavit
Exhibit S Bank of America Activity [REDACTED]
Exhibit T DHHS Policy Email
Exhibit U Case Comments
Exhibit V Health Care Determination

ISSUE

Did the Department properly determine Petitioner's MA eligibility?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. In 2016, Petitioner and [REDACTED] formed the [REDACTED] Estate, LLC.
2. An operating agreement for the [REDACTED] Estate, LLC set forth terms of the entity.
 - a. The members of the LLC were Petitioner and [REDACTED]
 - b. "No members shall have the right to withdraw or to be repaid any capital contribution except as provided in this Operating Agreement." Section 3.3.
 - c. "No member shall sell or otherwise dispose of or pledge or otherwise encumber all or any part of that Member's interest in the Company unless with the prior written consent of the Company and each of the other Members. Any attempted sale or other disposition or pledge or other encumbrance without such consent shall be null, void and of no effect." Section 5.1.
 - d. "No member shall be permitted to withdraw from the Company unless with the written consent of all Members. All terms and conditions of such withdrawal shall be as set forth in a Withdrawal Agreement signed by the Company and the withdrawing Member." Section 9.2.
3. On November 9, 2017, Petitioner signed a deed to transfer a residential property to the [REDACTED] Estate, LLC. The address of the residential property was [REDACTED] in [REDACTED] Michigan.
4. Thereafter, the sole purpose of the [REDACTED] Estate, LLC was to manage and rent the residential property in [REDACTED]
5. On June 27, 2023, [REDACTED] signed an affidavit in which she stated:
 - a. I am a 50% member of the [REDACTED] Estate, LLC.

- b. The other 50% member is [Petitioner].
 - c. The LLC owns real estate located at [REDACTED], [REDACTED] Michigan. . . .
 - d. The LLC provides that 'no member shall sell or otherwise dispose of or pledge or otherwise encumber all or any part of that Member's interest in the Company unless with the prior written consent of the Company and each of the other Members. Any attempted sale or other disposition or pledge or other encumbrance without such consent shall be null, void and of no effect.'
 - e. As members, all of our signatures would be needed to sell the property if we chose to do so. I have no intentions of selling my property and would not sign any documents necessary for this property to be sold.
6. On July 3, 2023, Petitioner applied for Medical Assistance from the Department to obtain health care coverage for her long-term care. Petitioner also requested retroactive coverage back to April 2023.
 7. As of June 28, 2023, Petitioner had bank accounts at Lake Michigan Credit Union [REDACTED] with a total balance of \$1,875.53.
 8. As of June 28, 2023, Petitioner had a bank account at Bank of America [REDACTED] with a total balance of \$101.13.
 9. As of June 28, 2023, Petitioner had a bank account at Bank of America [REDACTED] with a total balance of \$272.19.
 10. As of June 28, 2023, the [REDACTED] Estate, LLC had a bank account at Bank of America [REDACTED] with a total balance of \$9,885.48.
 11. Petitioner owned a residential property that she had used as her personal home. The address of the residential property was [REDACTED] Michigan. The 2023 State Equalized Value (SEV) of the property was \$70,600.
 12. The 2023 SEV of the property owned by the [REDACTED] Estate, LLC at [REDACTED] in [REDACTED] Michigan, was \$49,900.
 13. Petitioner had a whole life insurance policy through Gerber Life Insurance Company with a value of \$428.33.
 14. The Department reviewed Petitioner's application for MA, and the Department determined that Petitioner's assets exceeded the \$2,000 limit.
 15. The Department counted \$49,900 of the property owned by the [REDACTED] Estate, LLC, because the department determined that it was a jointly owned property,

and it did not meet the definition of an undue hardship in BEM 400 because the co-owner was not residing at the property.

16. On August 17, 2023, the Department mailed a health care coverage determination notice to Petitioner to notify her that she was not eligible for MA, including Medicare Savings Program coverage.

17. On September 14, 2023, Petitioner requested a hearing to dispute the Department's decision.

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 administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, Petitioner is disputing the Department's calculation of her countable assets. Petitioner asserts that the Department should not have counted the assets owned by the [REDACTED] Estate, LLC because those assets are not available to her. The Department asserts that the assets owned by the [REDACTED] Estate, LLC are countable because an interest in a limited liability company is a countable asset. Thus, the issue is whether the [REDACTED] Estate, LLC is a countable asset.

The relevant authority on countable assets is BEM 400. It states that an asset must be available and not excluded to be countable. *Id.* at p. 2. It also states, "count any assets in a Limited Liability Company (LLC)." BEM 400 (July 1, 2023), p. 57. Regarding jointly owned assets, it states that "jointly owned assets are assets that have more than one owner." *Id.* at p. 11. Regarding the availability of jointly owned assets, it states "a jointly owned asset is unavailable if all the following are true, and an owner cannot sell or spend his share of an asset: without another owner's consent, the other owner is not in the asset group, and the other owner refuses consent." *Id.* at p. 11-12.

Petitioner's interest in the [REDACTED] Estate, LLC is an asset. Since Petitioner is not the sole member of the LLC, the [REDACTED] Estate, LLC is a jointly owned asset. Pursuant to the terms of the [REDACTED] Estate, LLC Operating Agreement, Petitioner cannot sell or spend her interest in the [REDACTED] Estate, LLC without the other member's consent. Pursuant to an affidavit from the only other member, the other member will not consent to selling the residential property that the [REDACTED] Estate, LLC owns.

As of the date of Petitioner's application for MA, the [REDACTED] Estate, LLC owned real estate with a value of \$99,800, and it had a bank account balance of \$9,885.48. Thus, the total value of the [REDACTED] Estate, LLC was \$109,685.48. Petitioner had a 50% interest in the [REDACTED] Estate, LLC, so the value of her interest was \$54,842.74. The other member of the [REDACTED] Estate, LLC would not consent to selling the residential property that the [REDACTED] Estate, LLC owns. Thus, Petitioner's share of the value of the residential property that the [REDACTED] Estate, LLC owned was not available to Petitioner.

The remaining value of Petitioner's interest in the [REDACTED] Estate, LLC was Petitioner's share of the value of the [REDACTED] Estate, LLC's bank account balance. Funds in a business bank account are excluded from being counted. *Id.* at p. 24. The [REDACTED] Estate, LLC's bank account was a business bank account because the [REDACTED] Estate, LLC's sole purpose was to manage and rent a residential property, and the bank account was used solely for that purpose. Since the [REDACTED] Estate, LLC's bank account was a business bank account, the funds in the bank account are excluded from being counted. Thus, even if Petitioner's share of the value of the [REDACTED] Estate, LLC's bank account balance was available to Petitioner, the value was not countable.

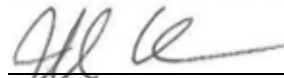
For these reasons, Petitioner's interest in the [REDACTED] Estate, LLC was not a countable asset. The Department asserted at one time that Petitioner's interest in the [REDACTED] Estate, LLC was countable because the real property owned by the [REDACTED] Estate, LLC was a jointly owned property, and it did not meet the definition of an undue hardship because the co-owner was not residing at the property. This reasoning is based on an analysis of the asset as jointly owned real property, but the asset at issue is not jointly owned real property. As discussed above, the asset at issue is a jointly owned limited liability company. Therefore, whether the asset is countable must be analyzed as a jointly owned limited liability company.

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 did not act in accordance with its policies and the applicable law when it found Petitioner ineligible for MA.

IT IS ORDERED the Department's decision is **REVERSED**. The Department shall reprocess Petitioner's application for MA, and the Department shall not count as an asset Petitioner's interest in the [REDACTED] Estate, LLC, the real property owned by the [REDACTED] Estate, LLC, or the [REDACTED] Estate, LLC's bank account. The Department shall determine Petitioner's eligibility back to April 2023 as requested in Petitioner's retroactive Medicaid application. The Department shall begin to implement this decision within 10 days of the date of mailing of this decision and order.

JK/ml



Jeffrey Kemm
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

Kelly A. Carter
Michigan Department of Attorney General, Health,
Education & Family Services Division
P.O. Box 30758
Lansing, MI 48909
AG-HEFS-MAHS@michigan.gov

DHHS

Kimberly Kornoelje
Kent County DHHS
121 Martin Luther King Jr St SE
Grand Rapids, MI 49507
MDHHS-Kent-Hearings@michigan.gov

Interested Parties

BSC3
M Schaefer
EQAD
MOAHR

Via First Class Mail:

Counsel for Petitioner

Catherine H. Jacobs
Warner Norcross and Judd
150 Ottawa Avenue NW
Grand Rapids, MI 49503

Petitioner

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