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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]

Date Mailed: May 23, 2022
MOAHR Docket No.: 22-000147
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 videoconference hearing was held on April 21, 2022, from Lansing, Michigan. The Petitioner was represented by David Shaltz, Attorney. [REDACTED] [REDACTED] and [REDACTED] [REDACTED] sons and court appointed Guardians and Conservators, appeared as witnesses for Petitioner. The Department of Health and Human Services (Department) was represented by Geraldine Brown, Assistant Attorney General. Mark Logan, Family Independence Manager (FIM), appeared as a witness for the Department.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-137; Petitioner's Exhibit 1, Letters of Guardianship and Conservatorship, and Petitioner's Exhibit 2, Plat Map, were also admitted.

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 October 1, 2021, an application for MA and the Medicare Savings Program (MSP) was submitted on Petitioner's behalf. (Exhibit A, pp. 8-16)

2. Petitioner owns life estates in his home (██████████), a rental home (██████████) and farmland, which are adjacent to his homestead. (Exhibit A, pp. 4, 18-19, 30, 46-47, 70-72, 117-118, 123, 125-131, and 136; Exhibit 2)
3. The Department determined that the life estates in the rental home and farmland were countable assets with a fair market value of \$██████████ (Exhibit A, pp. 18, 117-118, 123, 127-130, and 136; FIM Testimony)
4. On October 15, 2021, a Health Care Coverage Determination Notice was issued stating MA was denied due to assets in excess of program limits. (Exhibit A, pp. 132-135)
5. On January ██████ 2022, a request for hearing was filed on Petitioner's behalf contesting the Department's determination. (Exhibit A, pp. 4-7)

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 parties dispute whether the life estates in the rental home and farmland were countable assets for the MA eligibility determination. It was uncontested that both the rental home and farmland are rented and produce income for Petitioner. (Petitioner's Prehearing Brief, p. 1)

BEM 400 addresses the homestead exclusion and income producing property:

SSI-Related MA Only

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, October 1, 2021, p. 35.
(Underline added by ALJ)

Petitioner asserts that the BEM 400 policy violates federal Medicaid law because the SSI program would treat Petitioner's interest in the farmland and real estate adjacent to the home property as excluded assets with a \$0.00 countable value. (Petitioner's Prehearing Brief, pp. 1-2) In his brief, Petitioner properly cites 20 CFR 416.1212 as the federal regulation issued by the Commissioner of Social Security that describes the exclusion of the home in the SSI program. However, Petitioner only cited subsection a and appears to have not considered subsection b. (Petitioner's Prehearing Brief, pp. 10 and 14-15) Both are relevant to the contested issue in this case:

§ 416.1212 Exclusion of the home.

(a) **Defined.** A home is any property in which an individual (and spouse, if any) has an ownership interest and which serves as the individual's principal place of residence. This property includes the shelter in which an individual resides, the land on which the shelter is located and related outbuildings.

(b) **Home not counted.** We do not count a home regardless of its value. However, see §§ 416.1220 through 416.1224 when there is an income-producing property located on the home property that does not qualify under the home exclusion.

Accordingly, Petitioner's argument that there is nothing in 20 CFR 416.1212 that triggers loss of the exclusion of the homestead property if it is income-producing is not persuasive. (See Petitioner's Pre-Hearing Brief, p. 15) The applicable federal regulation does anticipate that there are circumstances under which an income producing property located on the home property would not qualify under the homestead exclusion. 20 CFR 416.1212(b) specifies that §§ 416.1220 through 416.1224 should be considered. In part, these regulations address property essential to self-support and how income-producing property essential to self-support is counted. See 20 CFR 416.1220 and 20 CFR 416.1222. Petitioner acknowledged that 20 CFR 416.1222 describes how the maximum exclusion for property essential to self-support of \$6,000 is consistent with BEM 400 policy. (Petitioner's Pre-Hearing Brief, p. 15) The testimony of the FIM indicates this is how the Department determined the value of Petitioner's life estates in these properties. (FIM Testimony)

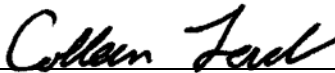
Overall, it is not found that the Department's treatment of the value of Petitioner's life estates in the farmland and rental home properties violated the federal regulations. Therefore, the Department's determination is upheld.

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/dm



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

Sent via Email:

MDHHS-Kent-Hearings
AG-HEFS-MAHS
C. George
EQADhearings
MOAHR
BSC3HearingDecisions

Sent via First-Class Mail:

David L Shaltz
20697 Gaslight Drive
Clinton Township, MI 48036

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