



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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Date Mailed: October 14, 2022
MOAHR Docket No.: 22-004011
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 October 6, 2022, from Lansing, Michigan. Petitioner ██████████ was present for the hearing. The Petitioner was represented by his spouse ██████████ and Authorized Hearings Representative ██████████ Medical Consultant. The Department of Health and Human Services (Department) was represented by Nicholas Kascahm, Eligibility Specialist and Sarah Hess, Assistance Payments Specialist.

Department's Exhibits A-F were admitted as evidence. Petitioner's Representative read affidavits into the record as evidence.

ISSUE

Did the Department properly determine Petitioner's Initial Asset Assessment amount for purposes of Medical Assistance – Long Term Care (MA-LTC)?

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, Petitioner's Representative filed DHS 4574 and DHS-4574-B applications for MA-LTC for Petitioner.
2. On August 25, 2022, and Initial Asset Assessment (IAA) was completed and maximum protected amount of \$137,400 was approved.

3. On [REDACTED] 2022, a DHS-4574 application for Medicaid was processed and denied for over assets.
4. On August 25, 2022, the Department sent Petitioner Notice of Case Action indicating that Petitioner was over assets for Medical Assistance benefit eligibility.
5. On September 12, 2022, Petitioner filed a Request for Hearing.
6. On September 16, 2022, the Michigan Office of Administrative Hearings and Rules received a Hearing Summary and attached documents.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Petitioners have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are found in the Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Title XIX of the Social Security Act, commonly referred to as “The Medicaid Act,” provides for Medical Assistance services to individuals **who lack the financial means to obtain needed health care**. 42 U.S.C. §1396. (Emphasis added)

The Medicaid program is administered by the federal government through the Centers for Medicaid and Medicare Services (CMS) of the Department of Health and Human Services (HHS). The state and federal governments share financial responsibility for Medicaid services. Each state may choose whether or not to participate in the Medicaid program. Once a state chooses to participate, it must operate its Medicaid program in accordance with mandatory federal requirements, imposed both by the Medicaid Act and by implementing federal regulations authorized under the Medicaid Act and promulgated by HHS.

Participating states must provide at least seven categories of medical services to persons determined to be eligible Medicaid recipients. 42 USC §1396a(a)(10)(A), 1396d(a)(1)-(5), (17), (21). One of the seven mandated services is *nursing facility services*. 42 USC §1396d(a)(4)(A).

For Medical Assistance eligibility, the Department has defined an asset as “any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.” NDAC 75-02-02.1-01(3). Under both federal and state law, an asset must be “actually available” to an applicant to be considered a countable asset for determining Medical Assistance eligibility. *Hecker*, 527 N.W.2d at 237 (On Petition for Rehearing); *Hinschberger v. Griggs County Social Serv.*, 499 N.W.2d 876, 882 (N.D.1993); 42 U.S.C. § 1396a(a)(17)(B); 1 J. Krauskopf, R. Brown, K. Tokarz, and A. Bogutz, *Elderlaw: Advocacy for the Aging* § 11.25 (2d ed. 1993). Yet, “actually available” resources “are different from those *in hand*.” *Schweiker v. Gray Panthers*, 453 U.S. 34, 48, 101 S.Ct. 2633, 2642, 69 L.Ed.2d 460 (1981) (emphasis in original). NDAC 75-02-02.1-25(2) explains: Only such assets as are available will be considered. Assets are actually available when at the disposal of an applicant, recipient, or responsible relative; when the applicant, recipient, or responsible relative has a legal interest in a liquidated sum and has the legal ability to make the sum available for support, maintenance, or medical care; or when the applicant, recipient, or responsible relative has the lawful power to make the asset available, or to cause the asset to be made available. Assets will be reasonably evaluated. . . . See also 45 C.F.R. § 233.20(a)(3)(ii)(D).

Medicaid is the joint state/federal program that provides payment for covered health care services for eligible ***indigent*** individuals. MCL 400.105, *et seq*; 42 USC 1396a, *et seq*. Medicaid is a means tested program. If Medicaid applicants have sufficient assets, income or insurance to pay for health care they do not qualify for the Medical Assistance program. Indigent for purposes of Medicaid eligibility in Michigan means that a one-person household may retain limited assets.

Assets mean cash, any other personal property and real property. **Real property** is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. **Personal property** is any item subject to ownership that is **not** real property (examples: currency, savings accounts and vehicles). BEM, Item 400, page 1. Countable assets **cannot** exceed the applicable asset limit. Not all assets are counted. An asset is countable if it meets the availability tests and is **not** excluded. Available means that someone in the asset group has the right to use or dispose of the asset. BEM, Item 400, page 5. All types of assets are considered for SSI-related MA. BEM, Item 400, page 2. For Medicare Savings Programs (BEM 165) and QDWI (BEM 169) the asset limit is:

- . \$4,000 for an asset group of one.
- . \$6,000 for an asset group of two.

For all other SSI-related MA categories, the asset limit is:

- . \$2,000 for an asset group of one.
- . \$3,000 for an asset group of two. BEM, Item 400, page 5.

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. **Exclude only one homestead for an asset group.** If an individual claims two homesteads, exclude the homestead of the individual's choice.

BEM 402, Special MA Asset Rules, describes when both a client's and community spouse's assets are counted. If a client and community spouse own two homes, or they are separated, and each owns a homestead, exclude the homestead with:

- The lower equity value for purposes of the initial asset assessment, and
- The higher equity value for purposes of determining initial eligibility. See policy in this item about exempting a homestead when the owner is absent from homestead. (BEM 400, page 36, Emphasis Added)

Exclude the homestead (see definition in this item) that an owner lived in prior to the time the individual left the property if any of the following are true:

- The owner intends to return to the homestead.
- The owner is in an LTC facility, a hospital, an adult foster care (AFC) home or a home for the aged.
- **A co-owner of the homestead uses the property as his home.**

Relative Occupied. Exclude **a** homestead provided both of the following are true:

- The owner is in an institution; see BPG Glossary.
- **The owner's spouse** or relative (see below) lives there. (BEM 400, page 37, Emphasis Added)

In this case, Petitioner's Representative argues:

Petitioner and his spouse have two homes, the one they currently reside in and one of which they have resided in in the past. The one they currently reside in has a lower equity value. The other house is vacant and has remained vacant for years. Thus, Petitioner should be allowed to use the one with the higher equity value as the Homestead for purposes of exclusion. Petitioner is not contesting the denial for excess assets but is contesting the amount counted for the IAA spenddown amount that Petitioner has to meet in order to qualify for Long Term Care Medical Assistance.

The evidence on the record indicates:

At application, on the DHS-4574-B the client indicated home — in trust [REDACTED] [REDACTED] and on the continued assets list has the camp/garage listed as real estate [REDACTED] Township.

On the IAA and at application the home at address [REDACTED] [REDACTED] was exempt PER BEM 400 SSI Related MA only at page 36 exclude only one homestead.

There was no mention the camp/garage was supposed to be the homestead. Property taxes also show [REDACTED] as 100% homestead exemption vs the camp/garage that shows 0% homestead exemption.

It was also written on the 2021 Property taxes primary home for the [REDACTED] [REDACTED] property.

On the DHS-4574 the address where Petitioner lived before entering the nursing facility is [REDACTED] and the mailing address for Petitioner's spouse is also the same address.

On the DHS-4574-B Petitioner's spouse is listed living at the address [REDACTED] [REDACTED] and the mailing address is also the same.

Verifications turned in with the application for Medicaid for the funeral contracts do not show they were made irrevocable and the DHS-4574 does not indicate this either.

No tax return was turned in with the application for Medicaid, so \$[REDACTED] was counted as an asset for account number [REDACTED]

Verification turned in with the application for Medicaid does show the amount as \$[REDACTED] instead of \$[REDACTED] as used.

The Administrative Law Judge finds that the Department properly used the property at [REDACTED] [REDACTED] as the Homestead, because Petitioner resided in the home before entry to long term care, his spouse currently resides in the home and because that home is the legal address for both mail and for tax return purposes.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department has established by the necessary competent, material and substantial evidence on the record that it acted in accordance with Department policy when it determined that the home in which Petitioner resided was the proper homestead excludable property, was countable assets for purposes of Medical Assistance benefit eligibility determination for Petitioner; and that Petitioner had in excess of \$2,000 in countable available assets for

purposes of Medical Assistance and retroactive Medical Assistance benefit eligibility on the date of application. The department properly denied Petitioner's application for Medical Assistance under the circumstances and determined that he had in excess of \$[REDACTED] of countable available assets.

The Administrative Law Judge finds that the Department has conceded on the record that it did not properly count the amount of \$[REDACTED] instead of \$[REDACTED] in the bank account. The Department must correct the Initial Asset Assessment.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to excess assets for Medical Assistance benefit eligibility and **REVERSED IN PART** with respect to the Initial Asset spend down amount.

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. Reinstate Petitioner's Initial Asset Application.
2. Reassess Petitioner's Initial Asset Assessment using the corrected figures in the accounts.

LL/ml


Landis Lain
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 :

DHHS
Jennifer Ives
Delta County DHHS
305 Ludington St.
Escanaba, MI 49829
MDHHS-UPSChearings@Michigan.gov

Interested Parties

BSC1
C. George
EQAD
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Via First Class Mail :

Petitioner

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

Authorized Hearing Rep.

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