

ISSUE

Did the Respondent properly deny Petitioner's request for a hardship exemption under the Michigan Estate Recovery Program?

FINDINGS OF FACT

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

1. On or about June 23, 2023, the Department received an Application for Hardship Waiver. The application was completed by Gerlad REDACTED and listed REDACTED REDACTED as the applicant. (Exhibit A).
2. At the time of application, Mr. REDACTED owned a home valued at \$81,212. (Exhibit A; Exhibit B; Testimony).
3. On July 24, 2023, the Department sent Petitioner a notice of denial indicating Petitioner did not meet the requirements for a hardship exemption because the Petitioner had more than \$10,000 in resources. (Exhibit B; Testimony.)
4. On or around August 14, 2023, Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules.

CONCLUSIONS OF LAW

The Estate Recovery Program is operated according to policies developed by the Department based on the Michigan State Medicaid Plan (MSMP) as amended (SPA). MCL 400.112g requires the Department to establish and implement an estate recovery program subject to an amendment to the MSMP and operated according to the provisions of the SPA as accepted by CMS.

MCL 400.112g provides, in pertinent part:

* * *

(3) The Department of Community Health shall seek appropriate changes to the Michigan Medicaid state plan and shall apply for any necessary waivers and approvals from the federal centers for Medicare and Medicaid services to implement the Michigan Medicaid estate recovery program.

The Department of Community Health shall seek approval from the federal centers for Medicare and Medicaid regarding all of the following:

(a) Which medical services are subject to estate recovery under section 1917(b)(1)(B)(i) and (ii) of title XIX.

(b) Which recipients of medical assistance are subject to estate recovery under section 1917(a) and (b) of title XIX.

(c) Under what circumstances the program shall pursue recovery from the estates of spouses of recipients of medical assistance who are subject to estate recovery under section 1917(b)(2) of title XIX.

(d) What actions may be taken to obtain funds from the estates of recipients subject to recovery under section 1917 of title XIX, including notice and hearing procedures that may be pursued to contest actions taken under the Michigan Medicaid estate recovery program.

(e) Under what circumstances the estates of medical assistance recipients will be exempt from the Michigan Medicaid estate recovery program because of a hardship. At the time an individual enrolls in Medicaid for long-term care services, the Department of Community Health shall provide to the individual written materials explaining the process for applying for a waiver from estate recovery due to hardship. The Department of Community Health shall develop a definition of hardship according to section 1917(b)(3) of title XIX that includes, but is not limited to, the following:

(i) An exemption for the portion of the value of the medical assistance recipient's homestead that is equal to or less than 50% of the average price of a home in the county in which the Medicaid recipient's homestead is located as of the date of the medical assistance recipient's death.

(ii) An exemption for the portion of an estate that is the primary income-producing asset of survivors, including, but not limited to, a family farm or business.

(iii) A rebuttable presumption that no hardship exists if the hardship resulted from estate planning methods under which assets were diverted in order to avoid estate recovery.

(f) The circumstances under which the Department of Community Health may review requests for exemptions and provide

exemptions from the Michigan Medicaid estate recovery program for cases that do not meet the definition of hardship developed by the Department of Community Health.

(g) Implementing the provisions of section 1396p(b)(3) of title XIX to ensure that the heirs of persons subject to the Michigan Medicaid estate recovery program will not be unreasonably harmed by the provisions of this program. [Emphasis added].

In order to follow the dictates of MCL 400.112g, the Respondent developed amendments to the State Plan under Title XIX of the Social Security Act and submitted the proposal to the Federal Centers for Medicare and Medicaid, Department of Health and Human Services, for approval. On May 23, 2011, the amendments to Michigan's State Plan were approved, with an effective date of July 1, 2010. Further amendments were approved September 19, 2012, with an effective date of April 1, 2012.

Paragraph 4 of the approved amended State Plan (SPA) defines undue hardship as follows:

An undue hardship may exist when (1) the estate subject to recovery is the primary income-producing asset of the survivors (where such income is limited), including, but not limited to, a family farm or business; (2) the estate subject to recovery is a home of modest value or (3) the State's recovery of a decedent's estate would cause a survivor to become or remain eligible for Medicaid.

* * *

Home of modest value is defined as a home valued at fifty percent (50%) or less of the average price of a home in the county where the homestead is located, as of the date of the beneficiary's death.

For individuals who apply for but do not meet the definition of undue hardship as found in MCL §400.112g and provided above, the State will consider granting an exemption when a survivor who was residing in the deceased's beneficiary's home continuously for at least two years immediately before the beneficiary's date of death, provided care that kept the deceased beneficiary out of an institution, even if the deceased beneficiary never entered an institution. This exemption will only be granted in circumstances where non-institutional long-term care services approved under the State Plan were provided and only after the means test has been satisfied.

The State is following its own definition of undue hardship in accordance with MCL §400.112g(3)(e). When considering whether to grant an undue

hardship waiver, a means test will be applied.' An Applicant will satisfy the means test only if both of the following are true:

- total household income of the applicant is less than 200 percent of the poverty level for a household of the same size; and
- total household resources of the applicant do not exceed \$10,000.

Undue hardship waivers are temporary. Undue hardship waivers expire when the conditions which qualified an estate, or a portion of an estate, for a waiver no longer exist.²

Paragraph 7 of the approved amended State Plan (SPA) outlines the collection procedures the State will use under the Estate Recovery Program. Paragraph 7 states, in pertinent part:

The State uses the following collection procedures:

* * *

The NOI [Notice of Intent] also indicates that the State may waive recovery in the event that recovery would result in an undue hardship. The NOI provides the State's definition of an undue hardship along with a contact phone number and address to request an undue hardship application. The NOI also advises that an undue hardship application may be downloaded from the estate recovery website and gives the url. Lastly, the NOI states that adverse decisions may be appealed under the Administrative Procedures Act, (MCL 24.201-24.328) within 60 days of receiving notice of the State's final decision.

Upon confirmation that a case does not meet any statutory exemptions or hardship conditions and that probate has been opened, the State files a claim against the estate and pursues recovery. The State's estate recovery claim is administered through the State Probate Court system and all claims are subject to review by the Probate Court.

The Probate Court's allowance or denial of the State's claim is subject to the appellate review available to all other Probate Court decisions.

The State will petition a court pursuant to estates and protected individuals code, for distribution of estate assets upon determination that the personal representative has failed to distribute the proceeds of the estate in a timely manner.³

¹ *West Virginia v Thompson*, 475 F.3d 204.

² Amended State Plan Under Title XIX of the Social Security Act, Attachment 4, 17-A, p 2.

³ MCL 700.3415; 3807(1); 3951; 3952; 3953.

* * *

The Department's policy to implement the Estate Recovery Program is published in BAM (BAM 120, pp 8-10):

Undue Hardship

Recovery may be waived if a person inheriting property from the estate can prove that recovery would result in an undue hardship. An application for an undue hardship must be requested by the applicant and returned with proper documentation in order for a hardship waiver to be considered. In order to qualify for a hardship exemption, an applicant must file the application with the department not later than 60 days from the date the department sends the Notice of Intent to the personal representative or estate contact. An undue hardship exemption is granted to the applicant only and not the estate generally.

Undue hardship waivers are temporary. Submitted applications will be reviewed by the department or its designee, and the department shall make a written determination on such application.

Undue hardship waivers involve a two-prong inquiry. The first prong requires the applicant to prove at least one of the three following categories:

An undue hardship may exist when one or more of the following are true:

- The estate subject to recovery is the sole-income-producing asset of the survivors (where such income is limited), such as a family farm or business.
- The estate subject to recovery is a home of modest value, see definition in this item.
- The state's recovery of decedent's estate would cause a surviving heir to become or remain eligible for Medicaid.

Once the first prong is satisfied, the second prong requires the applicant to also satisfy the means test under BAM 120:

When considering whether to grant an undue hardship, the department shall apply a means test to all applicants to ensure that waivers are not granted in a way that is contrary to the intent of the estate recovery program under federal law.

An applicant for an undue hardship waiver will satisfy the means test only if both of the following are true:

- Total household income of the applicant is less than 200 percent of the poverty level for a household of the same size as set in Reference Table Manual 246.
- Total household resources of the applicant do not exceed \$10,000.

BAM 120 also includes the following definitions:

Definitions:

Survivor: An heir who does not predecease the deceased beneficiary under the provisions of MCL 700.2104 or according to the terms of the decedent's will.

Home of Modest Value: A home that is valued at 50 percent or less of the average price of homes in the county where the home is located as of the date of the Medicaid beneficiary's death.

Value of Medicaid recipient's home: The State Equalized Value (SEV) of a Medicaid recipient's home from the year the Medicaid recipient died is used to determine whether that home is a home of modest value. The SEV will be double to find the value of the home.

Average Price: The average price of homes in the county shall be determined from the Equalized Valuation Totals Summary report (L-4023) published by the State Tax Commission. The average price shall be calculated by dividing the total True Cash Value of the Real Property in the county by the total Number of Parcels.

Resources: All income, as defined in BEM 500 series, and assets, as defined in BEM 400 an applicant has.

* * * *

Appeals

The Hardship Waiver applicant has the right to contest the department decision of whether an undue hardship exists. The applicant may request a hearing within 60 days of the notice of case action on the application. The request for a hearing must be in writing and will be conducted under the provisions of BAM 600.⁴

The Department denied the Application for a Hardship Waiver because the Petitioner, failed to satisfy the second prong of the means test in that the Petitioner had household resources that exceeded \$10,000.

⁴ BAM 120, January 1, 2018, pp 10-12.

Petitioner attempted to argue that it wasn't just the Petitioner asking for the hardship, but it was the rest of the heirs of the estate as well. The Petitioner went on to indicate that the other heirs of the estate would suffer a hardship if the application was not granted.

Based on the evidence presented, Petitioner has failed to prove, by a preponderance of evidence, that the Department's denial of the undue hardship exemption was improper. The policy is pretty clear in that the application exemption is generally only granted to the applicant and not the estate. And in this case, the application identified only one heir and not the others that were identified at the hearing. Furthermore, that one heir on the application had household resources in excess of the \$10,000 threshold set out in policy. Consequently, the Department's actions were appropriate given the application materials provided to them for consideration.

IT IS THEREFORE ORDERED that

The Department's decision is **AFFIRMED**.