

ISSUE

Did the Department properly deny Petitioner's request for an undue hardship exemption under the Michigan Estate Recovery Program on the basis that the estate subject to recovery is a home of modest value?

FINDINGS OF FACT

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

1. REDACTED REDACTED, Petitioner's mother, was an approved Medicaid beneficiary who received Medicaid benefits through the Department. (Exhibit A, pages 60-159).
2. As part of her Medicaid enrollment, Ms. REDACTED signed forms stating that she understood that, upon her death, the Department had the legal right to seek recovery from her estate for services paid by Medicaid. (Exhibit A, page 53; Testimony of Departmental Analyst).
3. In 2021, Ms. REDACTED was living in a home she owned at REDACTED in the city of REDACTED and REDACTED County, with assistance from family members, including Petitioner. (Testimony of Petitioner).
4. In August or September of 2021, Ms. REDACTED moved into a long-term facility. (Testimony of Petitioner).
5. On REDACTED 2021, Ms. REDACTED passed away. (Exhibit A, pages 59).
6. At the time of her death, Ms. REDACTED still owned her home at REDACTED (Exhibit A, page 15; Testimony of Departmental Analyst).
7. The state equalized value (SEV) of the home during the year of Ms. REDACTED's death was \$53,100. (Exhibit A, page 21; Testimony of Departmental Analyst).
8. The average price of homes within REDACTED County at that time in 2021 was \$154,132. (Testimony of Departmental Analyst).
9. After her mother's death, Petitioner moved into the home on REDACTED. (Testimony of Petitioner).
10. Petitioner, as personal representative for the Estate of REDACTED REDACTED, also subsequently opened a case with respect to it in probate court. (Exhibit A, pages 11-13).
11. On March 4, 2023, the Department brought a claim for estate recovery from the Estate of REDACTED REDACTED in probate court. (Exhibit A, page 10).

12. On October 5, 2023, the Department sent Petitioner a request for information regarding the status of Petitioner's mother's estate, noting that it had filed a claim against the estate. (Exhibit A, page 9).
13. On November 7, 2023, Petitioner applied for a hardship exemption with respect to the Estate of REDACTED REDACTED. (Exhibit A, pages 7-38).
14. With respect to the criteria for hardship waiver that the exemption was sought under, the application indicated that:

The estate asset subject to recovery is a home of modest value (i.e. a home with a value no higher than 50% of the average price of homes in the county where the home is located as of the date of the member's death.

Exhibit A, page 14

15. The application also stated in part:

The real property is [Petitioner's] residence. [Petitioner] received only Social Security income, in an amount less than the federal poverty level. The real property is a home of modest value, having a value no higher than 50% of the average price of homes in REDACTED County as of the decedent's death in October 2021.

Exhibit A, page 7

16. The application further identified the SEV of the home as \$53,100, (Exhibit A, page 21).
17. On November 14, 2023, the Department sent Petitioner written notice that her request for a hardship exemption had been denied. (Exhibit #2, page 1; Exhibit A, page 43).
18. With respect to the reason for the denial, the notice stated:

Based upon the information provided, this estate does not meet the requirements for a hardship exemption because the value of the home is greater than 50% of the average price of homes in the county where it is located. Therefore, MDHHS will continue to seek recovery from this estate. The legal basis for this decision is MCL § 400.112g.

Exhibit #2, page 1

19. On January 3, 2024, MOAHR received the request for hearing filed in this matter with respect to that denial. (Exhibit A, pages 1-6).

CONCLUSIONS OF LAW

The Estate Recovery Program is operated according to policies developed by the Department based on 42 USC 1396p, 42 CFR 433.36, MCL 400.112g, and the Michigan State Medicaid Plan as amended.

MCL 400.112g requires the Department to establish and implement an estate recovery program subject to an amendment to the Michigan State Medicaid Plan and operated according to the provisions of the amended State Plan as accepted by the Centers for Medicare & Medicaid Services (CMS).

With respect to such estate recovery, Bridges Administrative Manual (BAM) 120 (10-1-2018) states in part:

MSA ESTATE RECOVERY UNIT

Recoveries for Medicaid claims correctly paid are as follows:

- For individuals who received medical assistance at age 55 or older, recovery is made from the individual's estate for all services covered by the Michigan Medicaid program with dates of service on or after July 1, 2010, except Medicaid cost sharing. To be subject to estate recovery, a person over 55 must have begun receiving long-term care services after September 30, 2007. If a beneficiary over the age of 55 began receiving long-term care services prior to September 30, 2007 and there was a break in coverage and a new eligibility period began any time after September 30, 2007, the Medicaid recipient will be deemed to have begun receiving long-term care after September 30, 2007 and therefore be subject to recovery.
- Recovery will only be pursued if it is cost-effective to do so as determined by the department at its sole discretion.

Limitations on Recoveries

The state complies with the requirements of section 1917(b)(2) of the Social Security Act: Recovery of medical assistance will be made only after the death of the individual's surviving spouse, and only when the individual has no surviving child who is either under age 21, blind, or disabled.

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.

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.

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.
- Total household resources of the applicant do not exceed \$10,000.

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, Hearings.

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 Residential 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.

- Long-Term Care Services: Means services, including but not limited to, nursing facility services, hospice, home and community based services, adult home help, and home health.

BAM 120, pages 9-14

Here, Petitioner filed a request for an undue hardship exemption from estate recovery on the basis that the estate subject to recovery is a home of modest value; the Department denied that request; and Petitioner appealed that denial.

In appealing the denial, Petitioner bears the burden of proving by a preponderance of evidence that the Department erred.

Given the record in this case, Petitioner has failed to meet that burden of proof and the Department's decision must therefore be affirmed.

As discussed above, an exemption to estate recovery may be granted on the basis that if the person inheriting property from the estate can prove that recovery would result in an undue hardship, with the estate subject to recovery being a home of modest value a type of undue hardship.

However, the estate subject to recovery in this case does not meet the definition of a home of modest value as it is valued at more than 50 percent of the average price of homes in the county where the home is located as of the date of the Medicaid beneficiary's death.

As credibly testified to by the Departmental Analyst during the hearing and consistent with the above policy, the average price of homes in REDACTED County, where the home in question is located, was determined to be \$154,132 based on the total true cash value of residential real property in the county divided by the number of parcels; the value of the estate property was calculated to be \$106,200 by doubling the SEV of the home during the year the Medicaid beneficiary Ms. REDACTED died; and that the home in this case was therefore not a home of modest means as its value exceeded 50% of the average price of homes in REDACTED County.

In response, Petitioner argues that the Department erred by basing the average price on all residential parcels, as opposed to occupied homes, and that the error improperly deflates the average price of "homes" in REDACTED County. However, BAM 120 expressly provides that the "average price shall be calculated by dividing the total True Cash Value of Residential Real Property in the county by the total Number of Parcels", and Petitioner's argument must therefore be rejected.

Petitioner also argues that BAM 120 fails to comply with the statutory mandate in MCL 400.112g(3) to establish a process for additional review of cases that do not meet the definition of hardship developed by the Department, and that the Department's determination of no hardship must be set aside.

However, the review in this case is limited to the denied application for a hardship exemption based on the estate subject to recovery being a home of modest value and, as identified by the Department, the State Plan does provide for an additional review process for other cases from estate recovery.

Petitioner further argues that the Department has flexibility and should grant Petitioner's request because she closely meets or equals nearly every exception. However, even putting aside that Petitioner clearly does not meet or has not shown that she meets other exemptions, the Department denied the request submitted in this case, which was for an undue hardship exemption from estate recovery solely on the basis that the estate subject to recovery is a home of modest value; that denial was proper; and the undersigned Administrative Law Judge has not been delegated the authority to make an exception to Department policy.¹

Accordingly, for the reasons discussed above, the undersigned Administrative Law Judge finds that Petitioner failed to meet her burden of proof and the Department's decision must therefore be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Petitioner's request for an undue hardship exemption under the Michigan Estate Recovery Program on the basis that the estate subject to recovery is a home of modest value.

IT IS THEREFORE ORDERED that:

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