



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

MARLON BROWN
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: November 15, 2024
MOAHR Docket No.: 24-007466
Agency No.: [REDACTED]
Petitioner: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 17, 2024, from Lansing, Michigan. The Petitioner was represented by Attorney Scott Brogan. The Department of Health and Human Services (Department) was represented by Assistant Attorneys General Lindsay Lavine and Breanna Listerman. Nicholas Kasbohm Long Term Care Eligibility Specialist and Sarah Hess AP Supervisor appeared and testified for the Department. Department Exhibit 1, pp. 1-47 was received and admitted. Petitioner Exhibit A, pp. 1-5 was received and admitted.

ISSUE

Did the Department properly deny Petitioner's Medical Assistance (MA) application due to excess assets?

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 May [REDACTED] 2024, Petitioner applied for Long Term Care Medical Assistance (MA-LTC)
2. On May [REDACTED] 2024, a Health Care Coverage Determination Notice was sent to Petitioner but did not state the reason for denial.
3. On June [REDACTED] 2024, a Health Care Coverage Determination Notice was sent to Petitioner informing her that her MA application was denied due to excess assets.
4. On June [REDACTED] 2024, Petitioner requested hearing disputing the denial of MA.

5. The Department found that Petitioner had \$[REDACTED] in countable assets.
6. Petitioner is selling a parcel of real estate under a land contract to Sara Dionne and the Department valued the note at \$[REDACTED]
7. Petitioner is selling a parcel of real estate under a land contract to Christie Lang and the Department valued the note at \$[REDACTED]
8. On July [REDACTED] 2024, Petitioner signed a Correction to Land Contract by Mutual Assent of the Parties related to her land contract with [REDACTED] prohibiting the cancellation of debt upon Petitioner's death.
9. On July [REDACTED] 2024, Petitioner signed a Correction to Land Contract by Mutual Assent of the Parties related to her land contract with [REDACTED] prohibiting the cancellation of debt upon Petitioner's death.

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.

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 400

PROMISSORY NOTES/LOANS/ LAND CONTRACTS/ MORTGAGES

Land Contracts SSI-Related MA Only

A land contract is a form of seller financing. It is similar to a mortgage, but the buyer makes payments to the real estate owner (seller) until the purchase price is paid in full. A homeowner might also sell their home via a sale-leaseback agreement; see definition in this item. A land contract does not have to be recorded in Michigan. The person who sold the property is the holder of the note. The note is the holder's asset.

Example: John sells land to Irma on a land contract. John is the land contract holder. The land contract is John's asset. The land is Irma's asset. The value of a land contract is the

amount it can be sold for in the holder's geographic area on short notice (usually at a commercial discount rate) minus any lien on the property the holder must repay.

A land contract may be treated as a transfer of assets unless all the following are true: • The repayment schedule is actuarially sound; and • The payments are made in equal monthly amounts during the term of the agreement with no deferral of payments and no balloon payments; and • The contract must prohibit the cancellation of the balance upon the death of the lender. See BEM 405, Uncompensated Value, to determine the value of any land contract which does not meet all of the bullets listed in this policy. Note: The payments from a land contract are countable unearned income. BEM 400, p.42

Uncompensated Value

The uncompensated value of a divested resource is • The resource's cash or equity value. • Minus any compensation received. • The uncompensated value of a promissory note, loan, or mortgage is the outstanding balance due on the date of application. BEM 405

In this case, the Department argued that the land contract notes should be treated as a countable asset and that the value of the notes was the balance of the notes on the date of application for MA. The balance on the note for the [REDACTED] [REDACTED] land contract was \$[REDACTED] and the balance on the note for [REDACTED] [REDACTED] land contract was \$[REDACTED]. The Department points to BEM 400 and BEM 405 in support of their position. The total countable assets were found by the Department to be \$[REDACTED] and therefore Petitioner was over the \$2,000 asset limit.

Petitioner's Attorney argued that the land contract payments should be treated as an income stream and not an asset. Petitioner's Attorney argued that the land contract should have been treated as a transfer of assets because the repayment schedule was actuarially sound, the payments were in equal amounts and the contract prohibited the cancellation of the balance upon the death of the lender. Petitioner submitted a correction to the land contracts which included the prohibition of the cancellation of the balance upon the death of the lender. (Ex. A)

BEM 400 clearly explains how land contracts should be treated when determining an applicant's asset eligibility, when the applicant is a seller through a land contract. The example given in policy is identical to Petitioner's circumstance. The land contract is the seller's asset and the value of the land contract is the amount it can be sold for in the holder's geographic area on short notice (usually at a commercial discount rate) minus any lien on the property the holder must repay. BEM 400, p.42 There was no evidence presented that there were any liens on the property. The amount the land contract could be sold for is the balance due on the land contract because that is the amount of money the land contract seller would be entitled to. The balance on the note for the [REDACTED] [REDACTED] land contract was \$[REDACTED] and the balance on the note for [REDACTED] [REDACTED] land contract was \$[REDACTED]. Petitioner's total countable assets were \$[REDACTED] and therefore Petitioner was over the \$2,000 asset limit. BEM 400 The Department denial due to excess assets was proper and correct and consistent with Department policy.

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 denied Petitioner's MA-LTC application due to excess assets.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

AM/dm



Aaron McClintic
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 :

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