



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 27, 2024
MOAHR Docket No.: 24-010742
Agency No.: [REDACTED]
Petitioner: [REDACTED] [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 telephone hearing was held on October 31, 2024, from Lansing, Michigan. The Petitioner was represented by Gregory Hodge, Attorney. [REDACTED] [REDACTED] Daughter, was present. The Department of Health and Human Services (Department) was represented by Melissa Bianchi, Assistant Attorney General (AAG), and Bryan Beach, AAG. Samantha Johnson, Long Term Care (LTC) Specialist appeared as a witness for the Department. Eric Carlson, Family Independence Manager, was also present.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-47.

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 February [REDACTED] 2024, Petitioner was admitted to a LTC facility. (Exhibit A, p. 1)
2. On March [REDACTED] 2024, a property Petitioner was an owner of at [REDACTED] was sold. Petitioner's address on the Warranty Deed was [REDACTED] [REDACTED] (Exhibit A, pp. 21-23)

3. Petitioner is also an owner of the property at [REDACTED] [REDACTED] in which her son resides. (Exhibit A, pp. 1 and 4)
4. On April [REDACTED] 2024, an application for MA was filed on Petitioner's behalf. The address listed for Petitioner on the application for where she lived before entering the nursing facility was [REDACTED] (Exhibit A, pp. 9-20)
5. On April [REDACTED] 2024, documentation was provided to the Department in part, indicating the property at [REDACTED] was sold. (Exhibit A, pp. 24-26)
6. The Department determined that the property at [REDACTED] [REDACTED] would not be excluded as Petitioner's homestead and that her countable assets exceeded the limit for MA. (Exhibit A, pp. 1 and 36-43)
7. On June [REDACTED] 2024, a Health Care Coverage Determination Notice was issued to Petitioner approving limited coverage MA under the Plan First program effective April 1, 2024. The comments section notes that Petitioner did not reside at [REDACTED] [REDACTED] [REDACTED] so it cannot be excluded as her homestead, the value of this asset is countable for MA, and Petitioner's countable assets are over the limit for full coverage MA. (Exhibit A, pp. 44-47)
8. On September 10, 2024, a hearing request was filed of Petitioner's behalf contesting the Department's determination. (Exhibit A, pp. 3-7)

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.

Regarding the homestead definition and exclusion for SSI-related MA, Department policy states:

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 the individual owns more than one home exclude the principal place of residence. See glossary for definition of homestead and principal place of residence.

BEM 400, June 1, 2024, p. 37.

Regarding absent from homestead for SSI-related MA, Department policy states:

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.

Relative for this purpose means a person dependent in any way (financial, medical, etc.,) on the owner and related to the owner as any of the following:

- Child, stepchild, or grandchild.
- Parent, stepparent, or grandparent.
- Aunt, uncle, niece, or nephew.
- Cousin.
- In-law.
- Brother, sister, stepbrother, stepsister, half- brother, or half-sister.

BEM 400, June 1, 2024, p. 39

The Bridges Policy Glossary (BPG) defines homestead and principal place of residence as:

HOMESTEAD / HOME

The shelter that a person owns (or is buying) where they usually live and which is their principal place of residence. The homestead includes the shelter, the land on

which the shelter is located, and related building on such land, but does not include other shelters on the property.

Related terms: Principal place of residence.

BPG, June 1, 2024, p. 34.

PRINCIPAL PLACE OF RESIDENCE

An individual's principal place of residence is the dwelling the individual considers his/her established homestead/home and to which they intend to return if absent. If the individual owns more than one residence it is the residence in which they spend the most time.

BPG, June 1, 2024, p. 55.

In this case, the Department determined that the property at [REDACTED] [REDACTED] would not be excluded as Petitioner's homestead and that her countable assets exceeded the limit for MA. (Exhibit A, pp. 1 and 36-43). The Department asserts that because Petitioner did not reside at [REDACTED] [REDACTED] immediately prior to her LTC admission, it cannot be excluded as her homestead. (Exhibit A, p. 1). Petitioner asserts that the policy allows for a former home to be excluded because it would also be a home where the individual lived prior to the time the individual left the property. (Exhibit A, pp. 5-7)

The June [REDACTED] 2024 email from the Department's SSI-related MA eligibility policy specialist states that only the property that was the primary residence would be excluded as the homestead. It appears that the [REDACTED] [REDACTED] was **never** the primary address and so it does not merit the exclusion. (Exhibit A, p. 36, bolding added by ALJ). The Department policy, and the email from the SSI-related MA eligibility policy specialist, do not specify that the homestead must be where the individual resided immediately prior to the LTC admission. Accordingly, the Department's June [REDACTED] 2024, MA eligibility determination cannot be upheld.

Petitioner's eligibility for MA should be redetermined. If the Department needs additional verification to determine whether [REDACTED] [REDACTED] was ever Petitioner's primary address, verification should be requested.

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 did not act in accordance with Department policy when it determined Petitioner's eligibility for MA.

DECISION AND ORDER

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

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. Redetermine Petitioner's eligibility for MA for the April ■ 2024, application in accordance with Department policy.

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

Via-Electronic Mail :

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Petitioner

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