

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

IN THE MATTER OF:

MOAHR Docket No.: **22-000795**

Estate of [REDACTED],
Petitioner

Agency Case No.: [REDACTED]

v

Case Type: **EST**

**Michigan Department of Health and
Human Services,**
Respondent

**Issued and entered
this 6th day of July 2022
by: Robert J. Meade
Administrative Law Judge**

FINAL DECISION AND ORDER¹

This matter is before the undersigned Administrative Law Judge pursuant to 42 USC 1396p, MCL 400.9, MCL 400.112g, and the Medicaid State Plan upon Petitioner's request for a hearing.

PROCEDURAL SUMMARY

After due notice, a telephone prehearing conference was held on March 30, 2022, and a telephone hearing was held on June 7, 2022.

Attorney David J. Clark appeared on behalf of [REDACTED], daughter of [REDACTED] and the person requesting a caretaker relative exemption. ([REDACTED] or Petitioner).

Assistant Attorney General Geraldine A. Brown appeared on behalf of Respondent, Michigan Department of Health and Human Services (Respondent, MDHHS or Department). Mary Delaney, Department Analyst, appeared as a witness for the Department.

EXHIBITS

Petitioner's Exhibit: Exhibit 1: Ms. Tisdale's Michigan Driver License

Respondent's Exhibits: Exhibit A: 42 USC 1396p

¹ It was brought to the attention of the undersigned after issuing a Proposal for Decision (PFD) in this case that the undersigned has final decision-making authority in this case. As such, this Final Decision and Order is being issued given that neither party filed exceptions to the PFD.

- Exhibit B: 42 CFR 433.36
- Exhibit C: MCL 400.112g
- Exhibit D: MDHHS Denial Letters
- Exhibit E: Caretaker Documentation
- Exhibit F: Hardship Documentation

ISSUE

Did the Respondent properly deny Petitioner's request for a caretaker relative 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. The Department brought a claim for estate recovery from the estate of [REDACTED] pursuant to the mandates of 42 USC 1396p, MCL 400.112g, the Michigan State Medicaid Plan (MSMP) as amended (SPA) and Department policy (Bridges Administrative Manual [BAM]) for long-term care provided to [REDACTED] and paid for by Medicaid. (Exhibit D; Testimony.)
2. On or about March 23, 2020, Ms. [REDACTED] first applied for a Hardship Waiver through the Department, which was denied because Ms. [REDACTED] had a job working outside of the estate property, *i.e.*, the estate asset subject to recovery was not her primary source of income. (Exhibit F; Testimony.)
3. On February 3, 2022, Ms. [REDACTED]'s attorney filed additional documentation in support of a possible caretaker relative exemption for Ms. [REDACTED]. (Exhibit E; Testimony.)
4. Pursuant to law and Department policy, caretaker relative exemptions require that an applicant provide proof of *continuous* residency at the estate property for two years prior to the decedent entering a nursing facility and thereafter. However, because the caretaker relative exemption is temporary, it ends when the individual who is granted the waiver leaves the home, even for a short time. (Exhibits A-C; Testimony.)
5. The estate property is located at [REDACTED]. (Exhibits E, F; Testimony.)

6. The documentation Ms. [REDACTED] provided with her Application for Hardship Waiver in March 2020 showed her address as [REDACTED]. These documents included medical bills, a Certificate of Title for a vehicle, bank statements, and tax returns. (Exhibits E, F; Testimony.)
7. The documents provided by Petitioner's attorney in February 2022 showed Ms. [REDACTED] address as [REDACTED], and included Ms. [REDACTED] driver license, valid from 2012-2016; tax forms from 2013-2016; utility bills from 2021; and bank statements from 2013-2015. (Exhibit E; Testimony.)
8. On February 14, 2022, the Department sent Ms. [REDACTED] a notice that the request for a caretaker relative exemption was denied for failing to meet the policy requirements as the evidence did not show that she lived continuously at the [REDACTED] property. (Exhibit D; Testimony.)
9. On February 24, 2022, 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 42 USC 1396p, 42 CFR 433.36, MCL 400.112g, and 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.

42 USC 1396p(b)(2) provides, in pertinent part:

(2) Any adjustment or recovery under paragraph (1) may be made only after the death of the individual's surviving spouse, if any, and only at a time—

(B) in the case of a lien on an individual's home under subsection (a)(1)(B) of this section, when—

(ii) no son or daughter of the individual (who was residing in the individual's home for a period of at least two years immediately before the date of the individual's admission to the medical institution, and who establishes to the satisfaction of the State that he or she provided care to such individual which permitted such individual to reside at home rather

than in an institution), is lawfully residing in such home who has lawfully resided in such home on a continuous basis since the date of the individual's admission to the medical institution. (Emphasis added.)

42 CFR 433.36 provides, in pertinent part:

(2) The agency may make an adjustment or recovery under paragraph (h)(1) of this section only:

(iii) In the case of liens placed on an individual's home under paragraph (g)(2) of this section, when there is no—

(B) Son or daughter of the individual residing in the home, who has resided there for at least two years immediately before the date of the individual's admission to the institution, has resided there on a continuous basis since that time, and can establish to the agency's satisfaction that he or she has been providing care which permitted the individual to reside at home rather than in an institution. (Emphasis added)

MCL 400.112g provides, in pertinent part:

(6) The department of community health shall not recover assets from the home of a medical assistance recipient if 1 or more of the following individuals are lawfully residing in that home:

(a) The medical assistance recipient's spouse.

(b) The medical assistance recipient's child who is under the age of 21 years, or is blind or permanently and totally disabled as defined in section 1614 of the social security act, 42 USC 1382c.

(c) The medical assistance recipient's caretaker relative who was residing in the medical assistance recipient's home for a period of at least 2 years immediately before the date of the medical

assistance recipient's admission to a medical institution and who establishes that he or she provided care that permitted the medical assistance recipient to reside at home rather than in an institution. As used in this subdivision, "caretaker relative" means any relation by blood, marriage, or adoption who is within the fifth degree of kinship to the recipient.

(d) The medical assistance recipient's sibling who has an equity interest in the medical assistance recipient's home and who was residing in the medical assistance recipient's home for a period of at least 1 year immediately before the date of the individual's admission to a medical institution. (Emphasis added)

In order to follow the dictates of MCL 400.112g, the Department 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, Michigan 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. *West Virginia v. Thompson*, 475 F.3d 204. 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.

*Amended State Plan Under Title XIX of the Social Security Act
Attachment 4, 17-A, p. 2
Approved September 19, 2012
Emphasis added*

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. (Emphasis added.)

With regard to jurisdiction, the SPA clearly states in paragraph 7, which deals with hardship exemptions, 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. The SPA goes on to provide that once it is determined that a case does not meet any statutory exemptions for hardship, 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. As such, this tribunal only has jurisdiction to hear issues regarding hardship exemptions.

Here, on or about March 23, 2020, Ms. [REDACTED] first applied for a Hardship Waiver through the Department, which was denied because Ms. [REDACTED] had a job working outside of the estate property, *i.e.*, the estate asset subject to recovery was not her primary source of income. On February 3, 2022, Ms. [REDACTED]'s attorney filed additional documentation in support of a possible caretaker relative exemption for Ms. Tisdale. The documentation Ms. [REDACTED] provided with her Application for Hardship Waiver in March 2020 showed her address as [REDACTED]. These documents included medical bills, a Certificate of Title for a vehicle, bank statements, and tax returns. The documents provided by Petitioner's attorney in February 2022 showed Ms. [REDACTED]'s address as [REDACTED], and included Ms. [REDACTED]'s driver license, valid from 2012-2016; tax forms from 2013-2016; utility bills from 2021; and bank statements from 2013-2015. On February 14, 2022, the Department sent Ms. Tisdale notice that the request for a caretaker relative exemption was denied for failing to meet the policy requirements as the evidence did not show that she lived continuously at the Norton Road property.

Ms. [REDACTED] testified that she has lived at the [REDACTED] property for the past 28 years continuously. Ms. [REDACTED] indicated that she had mail delivered to the [REDACTED] property of her boyfriend because she has an ex-husband with a vendetta against her, and she does not want him to know where she lives. Ms. [REDACTED] testified that she originally purchased the [REDACTED] property from her parents on a land contract but deeded the property back to her parents in 2004 because she was facing an embezzlement charge and her attorney suggested this to protect the property from possible restitution. Ms. [REDACTED] explained that the property was eventually deeded back to her, but then deeded back to her parents in 2011, against her wishes, when her parents needed the property in their names to get a bank loan for the family business. Ms. [REDACTED] testified that her father then got sick and, for various reasons, the property was never deeded back to her.

Ms. [REDACTED] testified that her father first went into a nursing home in 2013 and then her mother ended up in a nursing home after a bad car accident in 2014. Ms. [REDACTED] indicated that she cared for both her parents before they went into the nursing home. Ms. [REDACTED] testified that she has always paid the property taxes on the [REDACTED] property and has received a homestead exemption at the property since 1995. Ms. [REDACTED] noted that the utilities at the [REDACTED] property are in her name and her son [REDACTED]'s name.

Ms. [REDACTED]'s son testified that his mother has always lived at the [REDACTED] property, and he has lived there his whole life, except for a few years when he lived in Florida.

Based on the evidence presented, Petitioner has failed to prove, by a preponderance of evidence, that the Department's denial of the caretaker relative exemption was improper. As indicated above, caretaker relative exemptions require that an applicant provide proof to establish continuous residency at the estate property, both before and after the Medicaid beneficiary enters a nursing facility. Furthermore, caretaker relative exemptions are only temporary and end if the individual seeking or granted the exemption ever leaves the property. See 42 USC 1396p(b)(2), 42 CFR 433.36(2)(iii)(b), MCL 400.112g(6)(c), and BAM 120. Here, the documentation Ms. [REDACTED] provided showed that she has lived at both the [REDACTED] property and the Norton Road property, at least since her mother entered a nursing facility. Ms. [REDACTED] does not really dispute this fact, admitting that she sometimes stayed at her boyfriend's house. As such, it cannot be said that she lived continuously at the estate property both before and after her mother entered a nursing facility. And while the undersigned can certainly sympathize with Petitioner's story, the Department can only base its decision on the evidence provided to it. Based on that evidence, Ms. [REDACTED] does not qualify for a caretaker relative exemption.

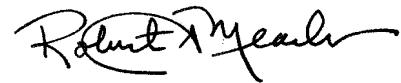
To the extent Ms. [REDACTED] is requesting equitable relief, the undersigned has no equitable authority to grant Petitioner such relief. (See *Huron Behavioral Health v Department of Community Health*, 293 Mich App 491 (2011)). As such, the Department's actions are proper and should be upheld.

DECISION AND ORDER

Based on the above, the undersigned Administrative Law Judge finds that the Department's decision to deny a caretaker relative exemption was proper. The Department may recover all Medicaid funds paid on behalf of the deceased Medicaid beneficiary, [REDACTED].

IT IS THEREFORE ORDERED THAT:

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

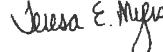


RM:tem

Robert J. Meade
Administrative Law Judge

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last-known addresses in the manner specified below, this 6th day of July 2022.



Teresa E. Myers
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