

## ISSUE

Did the Department properly deny Petitioner's request for an undue hardship exemption under the Michigan Estate Recovery Program?

## FINDINGS OF FACT

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

1. In 2025, the Department brought a claim for estate recovery from the Estate of REDACTED ("Estate") following her death. (Exhibit E, page 1; Testimony of Petitioner's representative; Testimony of Respondent's representative).
2. At the time of her death, REDACTED owned a house in Madison Heights, Michigan, where Petitioner, one of her sons, was living. (Exhibit A, page 2; Testimony of Petitioner's representative).
3. On or about April 15, 2025, Petitioner applied for a hardship exemption with respect to the Estate. (Exhibit A, pages 1-4).
4. As part of his application, Petitioner identified his assets as including a checking account with \$28,089.14 and an individual retirement account (IRA) with \$87,228.66. (Exhibit A, page 3).
5. On October 16, 2025, the Department sent Petitioner written notice that his request for a hardship exemption had been denied. (Exhibit E, page 1).
6. With respect to the reason for the denial, the notice stated:

The Michigan Department of Health and Human Services (MDHHS) has received and reviewed the information you provided for the Estate of REDACTED. Based upon the information provided, this estate does not meet the requirements for a hardship exemption because the applicant has more than \$10,000 in resources and does not pass the means test required for a hardship under BAM 120. Therefore, MDHHS will continue to seek recovery from this estate

The legal basis for this decision is MCL § 400.112g ...

*Exhibit E, page 1*

7. On December 30, 2025, MOAHR received the request for hearing filed in this matter with respect to that denial.

## **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 (6-1-2024) 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.

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 9-11*

Moreover, with respect to the definition of assets, Bridges Eligibility Manual (BEM) 400 (1-1-2026) provides:

**Assets Defined**

**Assets**

- Cash; see Cash in this item.

- Personal property. **Personal property** is any item subject to ownership that is not real property (examples: currency, savings accounts, and vehicles).
- Real property. **Real property** is land and objects affixed to the land such as buildings, trees, and fences. Condominiums are real property.

### Overview of Asset Policy

Countable assets **cannot** exceed the applicable asset limit. Not all assets are counted. Some assets are counted for one program, but not for another program. Some programs do not count assets; see *Programs with No Asset Test* in this item.

Consider both of the following to determine if an asset is countable, and how much to count:

- Availability:
  - See *Available* in this item.
  - See *Jointly Owned Assets* in this item.
  - See *Non-Salable Assets* in this item.
- See *Exclusions* in this item.

An asset is countable if it meets the availability tests and is **not** excluded.

**Note:** Only certain types of assets are considered by FIP, RCA, SDA, G2U, G2C, RMA, CDC and FAP. See the list in this section. FIP asset rules apply to RCA.

Consider the assets of each person in the asset group; see the *Program's Asset Group* policy in this item.

An asset converted from one form to another (example: an item sold for cash) is still an asset.

**Exception:** See Bridges Eligibility Manual (BEM) 503, Income Unearned, Sale of Property in Installments.

### FIP, SDA, RCA, G2U, G2C, RMA and CDC Only

The following types of assets are the only types considered for FIP,

**SDA, RCA, G2U, G2C, CDC and RMA:**

- Cash (which includes savings and checking accounts).
- Investments (which include 401(k), Roth IRA etc.).
- Retirement plans.
- Trusts.

**FIP, SDA, RCA, and CDC only**

*Homes and Real Property* in this item.

**SSI-Related MA Only**

All types of assets are considered for SSI-related MA categories.

*BEM 400, pages 2-3*

Here, Petitioner filed a request for an undue hardship exemption from estate recovery; 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 because the estate subject to recovery is a home of modest value and the person inheriting passes a means test.

However, the person inheriting property from the estate in this case, *i.e.*, Petitioner, did not pass through the means test.

To pass through the means test, Petitioner's total household resources must not exceed \$10,000, with resources including all assets as defined in BEM 400, and it is undisputed that Petitioner reported, and has, more than \$10,000 in resources given the amounts in his checking account and retirement account.

Moreover, while Petitioner's representative credibly testified that Petitioner's assets will be reduced in the future and Petitioner may go below the means test at some point, the Department is required to look at circumstances as they exist now and, based on those undisputed circumstances, Petitioner did not pass through the required means test.

Similarly, while Petitioner's representative also argued that Petitioner meets all other requirements for a hardship exemption, that argument, and the testimony and evidence supporting it, is ultimately irrelevant as Petitioner must meet all the requirements for a

hardship exemption and the undersigned ALJ has not been delegated the authority to make an exception to Department policy based on Petitioner meeting most of the criteria.

Accordingly, for the reasons discussed above, the undersigned ALJ 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.

**IT IS THEREFORE ORDERED** that:

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