

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-55309
2012-46086
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: September 13, 2012
County: Macomb (12)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a hearing was held in Clinton Township, Michigan on Thursday, September 13, 2012. The Claimant resides in a long-term care facility. Participating on behalf of Claimant's Authorized Hearing Representative ("AHR") and Guardian, [REDACTED]. Participating on behalf of Department of Human Services ("Department") were [REDACTED] and [REDACTED].

ISSUE

Whether the Department properly imposed a divestment penalty for the period from April 1, 2012 through June 24, 2012?

FINDINGS OF FACT

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

1. The Claimant is a MA recipient with a baseline date of February 1, 2011.
2. The Claimant resides in a long-term care facility.
3. On April 14, 2011, the AHR received \$19,114.16 when he cashed in the Claimant's previously unreported annuity. (Exhibit 2)
4. On April 20, 2011, the AHR deposited the \$19,114.16 in the Claimant's Pooled Trust Account. (Exhibit 2)

5. On January 13, 2012, the Department received a redetermination Medicaid Application on behalf of the Claimant. (Exhibit 3)
6. On February 6, 2012, the Department determined that a divestment occurred as a result of the transfer of funds to the Pooled Trust.
7. On May 14, 2012, the Department sent a Notice of Case Action to the Claimant notifying her of the divestment penalty from April 1 through June 24, 2012.
8. On May 18, 2012, the Department received the timely request for hearing.

CONCLUSIONS OF LAW

As a preliminary matter, two hearing requests were received and processed; one related to trust verifications (2012-46086), and the other related to the imposition of the divestment penalty (2012-55309). At the commencement of the hearing, all parties agreed that the trust verification issue was ultimately resolved and, as such, there was no need for a hearing on that issue. Accordingly, the Hearing Request received by the Department on April 2, 2012 and assigned to Registration Number 2012-46086 is DISMISSED.

Department policies are contained in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Tables ("RFT").

The Family Independence Program ("FIP") was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department, formerly known as the Family Independence Agency, administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children program effective October 1, 1996.

The Food Assistance Program ("FAP"), formerly known as the Food Stamp program, is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations ("CFR"). The Department, formerly known as the Family Independence Agency, administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

The Medical Assistance ("MA") program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations. The Department of Human Services, formerly known as the Family Independence Agency, administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The Adult Medical Program ("AMP") is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The State Disability Assistance (“SDA”) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services, formerly known as the Family Independence Agency, administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3151 through R 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

Divestment results in a penalty period in MA, not ineligibility. BEM 405 (2012), p. 1. Divestment means a transfer of a resource by a client (or spouse) that is within the look-back period and is transferred for less than fair market value (“FMV”). BEM 405, p. 1. Less than FMV means the compensation received in return for a resource was worth less than the FMV of the resource. BEM 405, p. 2. When a person gives up the right to receive income, the FMV is the total amount of income the person could have expected to receive. BEM 405, p. 5. Transferring a resource means giving up all or partial ownership in, or rights to, a resource. BEM 405, p. 2. During the penalty period, MA will not pay for long-term care services. BEM 405, p. 1.

Annuities are a written contract with a commercial insurance company, establishing a right to receive specified, periodic payments for life or for a term of years. BEM 400 (2012), p. 20. Only certain types of annuities are excluded as resources. BEM 400, p. 20. Converting countable resources to income through the purchase of an annuity is considered a transfer for less than fair market value, unless the annuity meets certain specified conditions. BEM 401 (2012), p. 4. One condition is that the annuity must be irrevocable. BEM 401, p. 4. An individual that disposes assets for less than fair market value on or after the look-back date is ineligible for medical assistance for a specific period of time. 41 USC 1396p(c)(1)(A). Assets that are transferred to a trust established solely for the benefit of a disabled individual *under* the age of 65 years are not subject to divestment penalty provisions. 42 USC 1396p(c)(2)(B)(iv); BEM 405, p. 8.

In this case, the Claimant owned an annuity not previously disclosed. The annuity was not an excluded asset in that it was not irrevocable as evident by the AHR’s ability to cash it in on April 14, 2011 for the amount of \$19,114.16. On April 20th, the AHR deposited the funds into the Claimant’s Pooled Trust. This transfer resulted in the Claimant resigning ownership of those funds without receipt of anything of comparable value in return, thus, was for less than fair market value. As such, the transfer is subject to the divestment penalties because the Claimant is *over* age 65. In light of the foregoing, it is found that the Department established it acted in accordance with Department policy when it imposed the Divestment penalty as a result of the asset

transfer to the Trust for less than fair market value. Accordingly, the Department's determination is AFFIRMED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department established it acted in accordance with Department policy when it imposed the Divestment penalty due to a transfer of an asset during the look-back period for less than fair market value.

Accordingly, it is ORDERED:

The Department's imposition of the Divestment penalty is AFFIRMED.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: October 5, 2012

Date Mailed: October 5, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

2012-55309/CMM
2012-46086/CMM

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CMM/tm

cc:

