

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2008-26155

Issue No: 2010

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 8, 2009

Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, an in person hearing was held on January 8, 2009. The Claimant failed to appear, but her attorney appeared and presented her case

ISSUE

Was there a divestment for purposes of Medical Assistance (MA) Long Term Care (LTC) eligibility?

FINDINGS OF FACT

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

- (1) On March 31, 2008, the Claimant applied for MA.
- (2) The Department determined the Claimant had a divestment and would require penalty.

- (3) On July 7, 2008, the Claimant requested a hearing.

CONCLUSIONS OF LAW

The Medicaid Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). 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. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In the present case, Claimant requested a hearing on July 7, 2008. The Claimant is appealing the Department's determination that she had a divestment of money which required a penalty. The Claimant asserts through her attorney that she was a victim of a wrongful taking. The Claimant gave her daughter a durable power of attorney over her affairs. The Claimant now alleges this same daughter wrongfully removed money from her account without her permission. The Claimant's daughter in October 2007 wrote a check to herself for [REDACTED]. This money according to the Claimant's attorney this was not for any services or bills that s needed payment. The Claimant's checking account in question lists both her and the daughter on the account.

Relevant policy PEM Item 405, p. 5:

Divestment results in a penalty period in MA, **not** ineligibility. Only LTC and waiver clients (see PEM 106) are penalized. Divestment policy does **not** apply to Qualified Working Individuals (PEM 169).

Divestment means a transfer of a resource (see "RESOURCE DEFINED" below) by a client or his spouse that:

- Is within a specified time (see "LOOK-BACK PERIOD" below), and
- Is a transfer for "LESS THAN FAIR MARKET VALUE", and

See “Annuity Not Actuarially Sound” and “Joint Owners and Transfers” below and PEM 401 about special transactions considered transfers for less than fair market value.

- Is **not** listed below under “TRANSFERS THAT ARE NOT DIVESTMENT.”

During the penalty period, MA will **not** pay the client’s cost for:

- LTC services, and
- Home and community-based services.

MA will pay for other MA-covered services.

Do **not** apply a divestment penalty period when it creates an undue hardship. See “UNDUE HARDSHIP” below.

LOA does **not** support this policy. You must manually compute the divestment penalty period and notify the client.

Resource means all the client’s and his spouse's assets and income. It includes assets and income the client or spouse were entitled to but did **not** receive because of action by:

- The client or spouse, or
- A person (including a court or administrative body) with legal authority to act in place of or on behalf of the client or his spouse, or
- Any person (including a court or administrative body) acting at the direction or upon the request of the client or his spouse.

Relevant policy PEM Item 405, p.1-3:

#### **RESOURCE DEFINED**

**Resource means all the client’s and his spouse's assets and income.** It includes all assets and all income, even countable and/or excluded assets, the individual or spouse receive. It also includes all assets and income that the individual (or their spouse) were entitled to but did **not** receive because of action by one of the following:

- The client or spouse.

- A person (including a court or administrative body) with legal authority to act in place of or on behalf of the client or his spouse.
- Any person (including a court or administrative body) acting at the direction or upon the request of the client or his spouse.

### **TRANSFER OF RESOURCE**

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. Not all transfers are divestment. Examples of transfers include:

- Selling an asset for fair market value (not divestment).
- Giving an asset away (divestment).
- Refusing an inheritance (divestment).
- Payments from a **“MEDICAID TRUST”** that are **not** to, or for the benefit of, the person or his spouse. See [PEM 401](#) (divestment).
- Putting assets or income in a trust. See [PEM 401](#).
- Giving up the **right** to receive income such as having pension payments made to someone else (divestment).
- Giving away a lump sum or accumulated benefit (divestment).
- Buying an annuity that is **not** actuarially sound (divestment).
- Giving away a vehicle (divestment).

Also see [“Joint Owners and Transfers”](#) for examples.

### **Transfers by Representatives**

Treat transfers by any of the following as transfers by the client or spouse.

- Parent for minor.
- Legal guardian.
- Conservator.
- Court or administrative body.
- Anyone acting in place of, on behalf of, at the request of or at the direction of the client or spouse.

### **Joint Owners and Transfers**

When a client jointly owns a resource with another person(s), any action by the client or by another owner that reduces or eliminates the client's ownership or control is considered a transfer by the client.

██████████ is applying for MA. In 2005, he added his sister's name to his bank account. Each is free to withdraw as much money as desired so adding the sister's name did **not** affect the client's ownership or control. On September 1, 2007, the sister withdrew ██████████ and deposited the money in her own bank account. ██████████ is considered to have transferred ██████████ on September 1, 2007, the day he no longer had ownership and control of his money.

██████████ is applying for MA. On September 1, 2007, ██████████ gave his sister half interest in real estate. His equity value at the time was ██████████. The ownership arrangement prevents either sibling from selling without the other's permission. ██████████ transferred a resource on September 1, 2007, the day he reduced his ownership and control by giving his sister part ownership and the power to prevent sale. The amount transferred depends on whether his sister is refusing to sell. The transferred amount is:

- ██████████ if she now refuses to sell.

The asset is unavailable and **not** countable for purposes of ██████████ asset eligibility.

- ██████████ if she now agrees to sell.

Relevant policy PEM Item 405, p.12:

### **UNDUE HARDSHIP**

Waive the penalty if it creates undue hardship. Assume there is no undue hardship unless you have evidence to the contrary.

Undue hardship exists when the client's physician (M.D. or D.O.) says:

- Necessary medical care is not being provided, and
- The client needs treatment for an emergency condition.

A medical emergency exists when a delay in treatment may result in the person's death or permanent impairment of the person's health.

A psychiatric emergency exists when immediate treatment is required to prevent serious injury to the person or others.

The Claimant's attorney also asserts the Department should waive the penalty of divestment based upon a hardship. As noted in the above policy, no such hardship exemption exists within policy. The policy clearly indicates a medical emergency in order to qualify as a hardship. Here, the Claimant does require care but no medical information to indicate a medical emergency was a concern at the time of application or at time of denial. In fact, in this case the Claimant was and is receiving care and at no time was care being withheld from the Claimant.

Therefore, the Department properly determined the Claimant's divestment.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services was acting in compliance with Department policy.

Accordingly, the Department's decision is UPHELD.

/s/ \_\_\_\_\_  
Jonathan W. Owens  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: \_\_\_\_\_

Date Mailed: \_\_\_\_\_

**NOTICE:** Administrative Hearings 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. Administrative Hearings 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.

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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.

JWO

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