

STATE OF MICHIGAN

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 200829334  
Issue No: 2010  
Case No: [REDACTED]  
Hearing Date: August 11, 2009  
Manistee County DHS

**ADMINISTRATIVE LAW JUDGE:** Janice G. Spodarek

**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, a telephone hearing was held. Claimant was represented by [REDACTED]

**ISSUE**

Did the Department of Human Services (DHS) properly begin the divestment penalty period in May 2007?

**FINDINGS OF FACT**

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

1. On December 29, 2006, claimant decedent entered a long-term care facility.
2. On May 30, 2007, claimant decedent applied for Medicaid and was approved on July 14, 2008.
3. Unrefuted evidence is that claimant divested certain monies which he gave to his son. Claimant decedent subsequently reversed the divestment which triggered a recalculation. Unrefuted evidence is that the total divestment period constitutes 13 months and 9 days.
4. The department applied the divestment penalty period beginning May, 2007.

5. On July 14, 2008, the DHS issued notice.
6. On August 7, 2008, the DHS received a hearing request.
7. One year after the hearing request, on August 11, 2009, SOAHR scheduled an administrative hearing.

### **CONCLUSIONS OF LAW**

The Medical 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 (DHS or department) 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 this case, the following facts are undisputed: claimant decedent entered long-term care December 29, 2006 and applied for MA on May 30, 2007. There was a divestment which was partially cancelled which triggered a total divestment period of 13 months and 9 days. The dispute herein arises to when the department should begin the divestment penalty.

Applicable DHS policy and procedure to the case herein is found in what was then called PEM Item 405, p 9, effective 7/1/2007:

The penalty period starts on the date when the individual enters the nursing facility...PEM 405, p 9.

The DHS argued that the DHS policy left out some critical language, explained elsewhere—a small picture of an envelope to the left side of PEM Item 405 cited above directed the DHS representative to a note for interpretation of the policy begin date. The essence of this note is that the divestment penalty starts on the date when the individual is eligible for Medicaid and would otherwise be receiving LTC. This note is clearly in conflict with the policy above.

Pursuant to the delegation of hearing authority:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated rules or overrule or make exceptions to agency policy set out in program manuals. Delegation of hearing authority, per PA 1939, Sec 9, Act 280.

The provisions of PEM are governed by the Michigan Administrative Procedures Act found in MCL 24.231. This act requires that any rules and/or changes be properly noted to the public and that there be public hearing before adoption. The statement as written in PEM effective as cited above, was properly noticed, published and adopted. The note

was not and cannot constitute policy or procedure as it is defined under Michigan law, policy or procedure. MCL 24.231.

The interpretive note mentioned above by DHS is not policy. Therefore, this Administrative Law Judge is mandated to follow policy and decides that the claimant decedent's penalty starts as of the date of LTC entry—December 29, 2006.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the correct divestment penalty start date in this case is December, 2006 when claimant entered the nursing home.

Accordingly, the department's application of a divestment period beginning subsequently on May, 2008 was incorrect. The department is ORDERED to reprocess this case with the divestment penalty beginning December 29, 2006 and reimburse monies from December 2006 through April 2007 for the long-term care.

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Janice G. Spodarek  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: March 15, 2011  
Date Mailed: March 15, 2011

**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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

JGS/db

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