

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED],  
[REDACTED],  
[REDACTED],

Claimant

Reg. No.: 2009-11236  
Issue No.: 2010  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
January 19, 2010  
Macomb County DHS (36)

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

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 hearing was held on January 19, 2010. Claimant was represented by his [REDACTED].

ISSUE

Did the Department of Human Services (DHS or department) properly impose a divestment penalty upon claimant when claimant's assets were absconded by a third party?

FINDINGS OF FACT

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

- 1) Claimant owned a parcel of property known as [REDACTED] which sold in December of 2007 for \$72,000.
- 2) Thereafter, in December of 2007, claimant's [REDACTED] absconded with the \$72,000 proceeds from the property sale.

- 3) On June 30, 2008, an application for Medical Assistance (MA) benefits was filed on behalf of claimant, a nursing home resident.
- 4) On November 20, 2008, the department denied MA for long-term care due to divestment of the [REDACTED] proceeds and imposed a divestment penalty period of eleven months and eighteen days.
- 5) On December 12, 2008, claimant's Guardian filed a request for hearing to protest the imposition of a divestment penalty.

#### 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).

Relevant departmental policy at the time of the application was as follows:

Assets must be considered in determining eligibility for ... SSI-related MA categories ...

Assets means cash, any other personal property and real property...

An asset is countable if it meets the availability tests and is not excluded... PEM Item 400, page 1.

An asset must be available to be countable. Available means that someone in the asset group has the legal right to use or dispose of the asset...

Assume an asset is available unless evidence shows it is not available... PEM Item 400, page 6.

Divestment results in a penalty period in MA, not in eligibility...

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 ...
- 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, or
- Home and community-based services, or
- Home help, or home health.

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 ...

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 the 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. PEM Item 405, page 1.

### 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 (MD or DO) says:

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

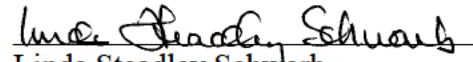
A medical emergency exists when a delay in treatment may result in the person's death or permanent impairment of the person's health.

A psychiatric emergency exists when immediate treatment is required to prevent serious injury to the person or others. PEM Item 405, page 11.

In this case, the [REDACTED] property (and the proceeds from its sale) was a countable asset for purposes of MA eligibility. Claimant's [REDACTED] had authority to act on claimant's behalf when the [REDACTED] property was sold. The [REDACTED] then reportedly absconded with the proceeds of the sales. A divestment is a transfer of a resource. Resource is defined as an asset, including assets the client was entitled to but did not receive because of the action of a person with legal authority to act in place of or on behalf of claimant or acting at the direction or request of the claimant. PEM Item 405, page 1. It would appear that the department followed policy in treating the proceeds of the [REDACTED] property as a divestment when absconded by claimant's [REDACTED]. See PEM Item 405, page 1. Further, the record does not support a finding that the application of a divestment penalty period created an undue hardship. There was no showing per claimant's physician that the penalty resulted in necessary medical care not being provided or that claimant needed treatment for a medical or psychiatric emergency. See PEM Item 405, page 11. Accordingly, the department's determination in this matter must stand.

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 properly imposed a divestment penalty period upon claimant when claimant's assets were absconded by a third party. Accordingly, the department's decision in this matter is hereby affirmed.

  
Linda Steadley Schwarz  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: March 24, 2010

Date Mailed: March 25, 2010

**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.

LSS/pf

cc:

