

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.: 2009-11732  
Issue No.: 2010  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
September 17, 2009  
Wayne County DHS (82)

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 September 17, 2009. Claimant was represented by her attorney, [REDACTED].

ISSUE

Did the Department of Human Services (DHS or department) follow policy in refusing to recalculate a Medical Assistance (MA) divestment penalty when only a portion of the transferred resources were returned or expended on behalf of the claimant ?

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 March 28, 2008, an application for MA was filed on claimant's behalf.

- 2) Based upon a \$95,547.06 divestment to claimant's daughter in December of 2007, the department calculated a fifteen-month period of divestment which was to end on March 12, 2009.
- 3) On May 6, 2008, the department notified claimant of the fifteen-month divestment penalty.
- 4) On October 8, 2008, claimant's attorney requested a recalculation of the divestment penalty period based upon partial return of the divested property because claimant's daughter had been paying claimant's nursing home bill and making other expenditures on claimant's behalf.
- 5) The department declined to recalculate the divestment penalty period because all of the transferred resources had not been returned.
- 6) On December 22, 2008, a request for hearing was filed on behalf of claimant.

#### CONCLUSIONS OF LAW

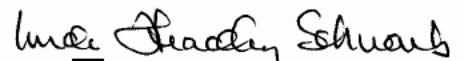
The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In this matter, when the divestment occurred in December of 2007, departmental policy at PEM Item 405, Page 10, authorized the department to recalculate the divestment penalty period if some or all of the transferred resources were returned. When claimant's attorney requested recalculation of the divestment penalty period on October 8, 2008, the department's

policy at PEM Item 405, Page 11, had been changed to require that a recalculation of the divestment penalty period could occur only if all of the transferred resources were returned or full compensation was paid for the resources. Claimant's attorney argues that the departmental policy change was unconstitutional and not in compliance with federal law. The undersigned Administrative Law Judge has no authority to rule on constitutional issues and is unable to find that departmental policy fails to comply with applicable federal law. Since the department has followed its own policy, it must be upheld.

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 followed policy in refusing to recalculate a Medical Assistance divestment penalty period when only a portion of the transferred resources were returned or expended on behalf of the claimant. Accordingly, the department's action in this matter must be affirmed.

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

Date Signed: January 22, 2010

Date Mailed: January 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.

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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:

