

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.: 2009-23883  
Issue No.: 2010  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
December 16, 2009  
Wayne County DHS (82)

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was held on December 16, 2009. The Claimant was represented by Attorney [REDACTED] [REDACTED] who appeared and testified. [REDACTED] Supervisor and [REDACTED] [REDACTED] FIM appeared on behalf of the Department.

ISSUE

Is the department correct in determining claimant's MA divestment penalty period?

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 applied for Medicaid on December 18, 2008 with retroactive request back to September 1, 2008.
- (2) Claimant divested funds within the look back period in the amount of \$49,377.31 which created a 7 month 29 day penalty period.

- (3) A Medical Assistance budget was completed on February 2, 2009 and the department determined that claimant had excess income that resulted in a Medicaid deductible of \$6583.
- (4) Claimant has met the monthly spend down each month since September 2008.
- (5) The department determined claimant's divestment penalty period began April 1, 2009.
- (6) Claimant requested a hearing on April 15, 2009 contesting the beginning date for the penalty period.

#### 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 (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).

The Medical Assistance program was designed to assist needy persons with medical expenses. The State of Michigan has set guidelines for income, which determines if a MA group falls within the needy classification. Under PEM Items 544 and 545, an eligible Medical Assistance group (Group II MA) has income the same as or less than the "protected income level" plus medical insurance premiums as set forth in the policy contained in the program reference table. An individual or MA group whose income is in excess of the monthly protected income level is ineligible to receive MA. However a MA group may become eligible for assistance under the deductible program. A deductible is a process, which allows a client with excess income to be eligible for MA, if sufficient allowable medical expenses are incurred. Each

calendar month is a separate deductible period. The fiscal group's monthly excess income is called the deductible amount. Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month. The MA group must report expenses by the last day of the third month following the month it wants medical coverage. (PEM 545; 42 CFR 435.831.)

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. PEM 105, p. 1 Medicaid is also known as Medical Assistance ("MA"). *Id.* The Medicaid program is comprised of several categories; one category is for FIP recipients while another is for SSI recipients. *Id.* Programs for individuals not receiving FIP or SSI are based on eligibility factors in either the FIP or SSI program thus are categorized as either FIP-related or SSI-related. *Id.* To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formally blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant women, receive MA under FIP-related categories. *Id.*

In general, the terms Group 1 and Group 2 relate to financial eligibility factors. PEM 155 through 174 describes SSI-related categories. PEM 105, p. 1 Financial eligibility for Group 1 exists when countable income minus allowable expenses equals or is below certain income limits. *Id.* The income limits vary by category and are for non-medical needs such as food and shelter. *Id.* Medical expenses are not used when determining eligibility for FIP- and SSI-related Group 1 categories. *Id.* Extended-Care benefits are an SSI-related Group 1 MA category.

FIP- and SSI-related Group 2 eligibility is possible even when net income exceeds the income limit because incurred medical expenses are considered. *Id.* Eligibility is determined on

a calendar month basis. PEM 105, p. 2 Individuals that are aged (65 or older) blind or disabled fall under the SSI-related Group 2 MA category. PEM 166, p. 1

As noted above, Extended-Care is an SSI-related Group 1 MA category that is available only to L/H and waiver clients who are aged (65 or older), blind, or disabled and whose gross income does not exceed \$1,869.00 for 2007, and \$1,911.00 for 2008 and \$2022.00 for 2009. PEM/BEM 164, p. 2. L/H patient is a MA client who was in the hospital and/or LTC facility in a calendar month containing at least one day that is part of a period in which a person was (or is expected to be) in a LTC facility and/or hospital for at least 30 consecutive days and the person was not a waiver patient. PRG Glossary, p. 22 Countable income may be more than the amount a person actually receives because it is the amount before any deductions including deductions for taxes and garnishments. PEM 500, p. 1 Court ordered child support is not deducted from income in determining Extended-Care eligibility. PEM 164, p. 2; PEM 541, p. 1. The patient allowance for clients who are in, or expected to be in, a LTC and/or hospital the entire L/H month is \$60.00. PEM 546, p. 1.

Assets must be considered in determining MA eligibility. PEM 400, p. 1. Assets are cash and any other personal and/or real property. *Id.* Countable assets must be available and cannot exceed the applicable asset limit. PEM 400, pp. 1, 6. Available means that someone in the asset group has the legal right to use or dispose of the asset. PEM 400, p. 6

Divestment for MA purposes refers to a transfer, unless excluded, of a resource by a client or his/her spouse that is within a specified time, and is less than fair market value. PEM 405, p.1 Resource means all of the client's and spouse's assets and income. BEM545 page1 provides that the penalty period starts on the date which the individual is eligible for Medicaid

and would otherwise be receiving institutional level care, and is not already part of a penalty period.

In the present case, claimant agrees that divestment occurred and that a penalty must be imposed. The only unresolved issue is when the penalty should begin. Claimant asserts that the date the divestment penalty should have begun was September 2008, the month that claimant first met her deductible and was eligible for MA. Claimant cites BEM545 page1 which provides that the penalty period starts on the date which the individual eligible for Medicaid and would otherwise be receiving institutional level care.

The department asserts that the penalty period should begin in April 2009. The Department stated in a letter dated February 3, 2009 “Divestment penalty can not be imposed while she is in spend-down status. Per manual item PEM 500 and PEM 530 she must pay for her long term care coverage until such time that her income changes.” The policy cited by the Department does not support its position.

This ALJ finds that the department has not acted in accordance with department policy and law in determining when the penalty period should begin. Pursuant to the above cited policy claimant’s divestment penalty should have begun on September 1, 2008 and ended on April 29, 2009.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department improperly determined the date when the Claimant’s MA divestment penalty began. Claimant’s MA divestment penalty should have begun on September 1, 2008 and ended on April 29, 2009.

Accordingly, the Department's determinations are REVERSED.



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Aaron McClintic  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: 1/12/2010

Date Mailed: 1/12/2010

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 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.

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