

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 200929335
Issue No: 2010
Hearing Date: March 30, 2010
Gladwin 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, an in-person hearing was held in [REDACTED]. Claimant as represented at the administrative hearing by [REDACTED].

ISSUE

Did the DHS properly calculate a divestment penalty pursuant to claimant's January 2009 LTC application?

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 January 5, 2009, claimant applied for LTC with the Michigan DHS.
2. MA was subsequently opened not at issue herein.
3. On May 1, 2008, claimant sold a portion of his land for [REDACTED]. The department requested verification/receipts.
4. The department subsequently determined that [REDACTED] was not accounted for.
5. The department used a baseline amount of [REDACTED].
6. The department determined the divestment penalty as 12 months and 18 days.

7. Evidence on the record indicates that the department miscalculated the unaccounted receipts due to a math error in the amount of [REDACTED]. The department failed to allow verified receipts corroborated by personal testimony at the administrative hearing totaling [REDACTED]. Exhibit S.
8. Claimant submitted verification of having paid [REDACTED] to pay off an exempt vehicle.
9. The department stated in one portion of its exhibits that [REDACTED] was accounted for; in another portion of the exhibits [REDACTED]. See Exhibit D.
10. Total allowed receipts verified include the [REDACTED] 5 allowed by the department; plus a [REDACTED] math error; plus [REDACTED] pursuant to Exhibit F; plus [REDACTED] pursuant to verification of a vehicle payoff. Claimant is entitled to [REDACTED] plus [REDACTED] totaling [REDACTED] minus [REDACTED] equals a divestment total of [REDACTED].
11. No verification was submitted to show that a hardship exception meets the DHS requirements.
12. The DHS issued notice on April 23, 2009. Claimant requested a hearing on June 9, 2009.

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 BRIDGES Administrative Manual (BAM), the BRIDGES Eligibility Manual (BEM) and the BRIDGES Reference Manual (BRM).

Applicable policy and procedure to the case herein is found in PEM Item 400 and 405.

In this case, the dispute centered on the calculation of the allowable expenses. Under policy, an individual does not divest if they use the money "for themselves" per the department's reading of the policy.

After a factually intensive evidentiary hearing, evidence shows that in addition to the [REDACTED] allowed by the department, claimant had a verifiable receipt for an additional [REDACTED] and an additional [REDACTED] in a motor vehicle payoff. In addition, there was a mathematical error of [REDACTED].

After careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge finds that claimant verified receipts that do not constitute

divestment under DHS policy and procedure which totals [REDACTED]. Claimant is entitled to [REDACTED] plus [REDACTED] totaling \$ [REDACTED] minus [REDACTED] 3 equals a divestment total of [REDACTED]. The department is ordered to recalculate the divestment.

Claimant also requested that a hardship exception be allowed in his case. Under BEM Item 405, p 12, undo hardship exists when there is a medical emergency which may result in a person's death or permanent impairment of that's person's health. However, while there may have been one in this case, there is no medical documentation to verify the same. Thus, this Administrative Law Judge does not find a hardship.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were incorrect.

Accordingly, the department's calculation of claimant's divestment was not correct. This Administrative Law Judge finds that claimant submitted sufficient documentation to show that of the [REDACTED] from the sale of land, claimant accounted for receipts totaling \$ [REDACTED]. That results in a divestment of [REDACTED]. The department is Ordered to recalculate the divestment penalty, and issue any supplemental benefits to claimant to which he may be entitled. The department shall issue written notice. Claimant shall retain a right to hearing for 90 days from the date of the written notice should claimant dispute the calculation of the new penalty and/or the amount of supplemental benefits. It is so Ordered.

/s/

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

Date Signed: May 24, 2011

Date Mailed: May 24, 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

cc:

