

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: 2009-2981

Issue No: 2010

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 23, 2009

Mecosta County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 on June 23, 2009. Claimant did not appear; however, she was represented by [REDACTED]

ISSUE

Did the department properly calculate claimant's Medicaid (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 is a long-term care resident.
- (2) On May 20, 2008, an MA long-term care application was filed on claimant's behalf.

(3) The department's policy at PAM Item 115, pg 11, requires the local office to approve or deny long-term care MA applications by written notice within 45 days from receipt of same.

(4) If this internal standard of promptness had been followed in claimant's case, the local office could have dated/mailed their application denial notice no later than July 4, 2008.

(5) Claimant's application denial notice advising her of a 2.11 month divestment penalty before MA eligibility could begin is dated August 6, 2008 (Department Exhibit #4).

(6) The processing of claimant's disputed application occurred in August, 2008; consequently, the local office used the policy in effect in the processing month to determine the divestment penalty's length (2.11 months).

(7) On October 21, 2008, the local office received a hearing request from claimant's counsel which argues for a reduction in the penalty period to 1.92 months through issuance of an Administrative Order requiring the department to use the policy in effect on claimant's application filing date (5/20/08) rather than in the department's processing month (8/08).

(8) Claimant's hearing was held on June 23, 2009.

(9) Claimant's counsel appeared at the hearing, but he could cite no case law, legal precedent, policy manual item or federal regulation to support his position.

(10) Claimant's counsel did, however, place a Due Process argument on the record.

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).

The department's general divestment policy in effect pre and post July 2008 states:

MA DIVESTMENT

DEPARTMENT POLICY

MA ONLY

Divestment results in a penalty period in MA, **not** ineligibility. Only LTC and waiver clients (see PEM 106) are penalized. Divestment policy does **not** apply to Qualified Working Individuals (PEM 169). PEM, Item 405, p. 1.

TRANSFER OF RESOURCES

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. **Not** all transfers are divestment. Examples of transfers include.

- . Selling an asset
- . Giving an asset away
- . Refusing an inheritance
- . Payments from a "MEDICAID TRUST" that are **not** to, or for the benefit of, the person or his spouse. See PEM 401.
- . Putting assets or income in a trust. See PEM 401.
- . Giving up the **right** to receive income such as having pension payments made to someone else.
- . Giving away a lump sum or accumulated benefit.
- . Buying an annuity that is **not** actuarially sound. PEM, Item 405, p. 2.

Uncompensated Value

The uncompensated value of a divested resource is the resource's cash or equity value, minus any compensation received.

The uncompensated value of a promissory note, loan, or mortgage is the outstanding balance due on the “Baseline Date.” PEM, Item 405, p. 10.

Computing Penalty Period

The penalty period is computed on the total “Uncompensated Value” of all resources divested.

Determine the “Uncompensated Value” for each resource transferred and combine into a total “Uncompensated Value.”

Divide the total “Uncompensated Value” by the average monthly private LTC Cost in Michigan for the client’s “Baseline Date.” This gives the number of full months for the penalty period. Divide the fraction remaining by 30 to determine the number of days for the penalty period in the remaining partial month.

Apply the total penalty months and days.

The 1st day the client is eligible to receive MA coverage for LTC, MIChoice, home help, or home health services is the 1st day after the penalty period ends.

The penalty period starts with the first day of the calendar month in which divestment occurred provided it is not already part of a penalty period. When periods overlap, start the new period on the date after the previous period ends. PEM, Item 405, p. 9.

The parties agree on the lump sum cash values and the assessed, [REDACTED] value claimant gave away during her “look back” period, specifically on August 17, 2007 (Department Exhibit #2). Additionally, claimant’s counsel agrees with the baseline date and the average monthly private long-term costs in Michigan used by the local office in calculating claimant’s 2.11 month divestment penalty (See PEM Item 405, pg 10).

Counsel’s sole argument is the department’s policy prior to July, 2008 allowed for an MA applicant to transfer one vehicle without considering that as divestment. Claimant’s application was filed on May 20, 2008. If this policy is used in claimant’s case, the length of her divestment penalty will drop from 2.11 months to 1.92 months.

The department used the policy in effect when they processed claimant's application in August 2008. Nothing in the department's policy or the MA federal regulations on which that policy is based expressly prohibits them from doing so. Furthermore, both the pre and post July 2008 policy states:

PENALTY PERIOD

No Maximum Penalty

There is no maximum limit on the penalty period for divestment under this new policy.

Any penalty period established under previous policy continues until it ends. Apply the penalty policy in place at the time of transfer for any transfers made before February 8, 2006. PEM, Item 405, p. 9.

This policy expressly mandates the department to apply the penalty policy in effect at the time of transfer for any transfers made before February 8, 2006. Likewise, if the department had intended to create a policy directive requiring the department to use the policy in effect on an MA application filing date, they would have done so. The fact this was not done clearly indicates that was never the department's intention, as there is no legal requirement for them to do so.

Additionally, the department admittedly failed to meet their internal standard of promptness in mailing claimant's denial notice. However, this was harmless error. The department had until July 4, 2008 to give timely notice. At that point, the new policy had taken effect. So whether the notice was sent in July or August, 2008, the result would have been the same. Claimant's penalty period must include the value of the [REDACTED] Furthermore, that penalty period was correctly calculated. Absolutely no basis in fact, law or departmental policy requires reversal of the department's actions.

Lastly, claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly calculated claimant's MA divestment penalty period.

Accordingly, the department's action is AFFIRMED.

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 29, 2009

Date Mailed: June 30, 2009

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.

MBM/db

cc:

