

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER:

[REDACTED]

Reg No. 200910487
Issue No. 2010
Case No. [REDACTED]
Load No. [REDACTED] 1
Hearing Date: August 5, 2009
St Clair County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 August 5, 2009. Claimant was represented by [REDACTED].

ISSUE

Whether the Department of Human Services (department) acted in compliance with department policy when it determined claimant's eligibility for Medical Assistance (MA).

FINDINGS OF FACT

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

1. On an unknown date, claimant applied for MA and was approved MA benefits.
2. On or about July 2008, department determined claimant divested of assets, issued timely written notice to claimant, and instituted a divestment penalty effective August 2, 2008 and affecting September 2008 MA eligibility. Department Hearing Summary, Department Exhibit A, pgs 1-104.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Department manuals provide the following policy statements and instructions for caseworkers:

Divestment means a transfer of a resource by a client or his spouse that:

Is within a specified time, 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.

LOA 2 does **not** support this policy. You must manually compute the divestment penalty period and notify the client.

A person’s baseline date is the **first** date that the client was eligible for Medicaid and one of the following:

In LTC.
APPROVED FOR THE WAIVER” (PEM 106).
Eligible for Home Health services.
Eligible for Home Help services

A client’s baseline date does **not** change even if one of the following happens:

The client leaves LTC.
The client is no longer “**APPROVED FOR THE WAIVER**”.
The client no longer needs Home Help.
The client no longer needs Home Health.

LESS THAN FAIR MARKET VALUE

Less than fair market value means the compensation received in return for a resource was worth less than the fair market value of the resource.

MA

Social Security Act, Sections 1902(a)(18), 1917

In this case, the department asserts that claimant divested of assets and must serve a divestment penalty. The department must manually compute the divestment penalty. To support the department's action, it submitted into evidence numerous copies of receipts, canceled checks, account records, and other financial documents. Finding of Fact 2. However, neither department testimony nor caseworker notes submitted into evidence adequately and clearly explain the department's calculations and conclusions regarding the divestment penalty. Department A. As such, the department has not met its burden of proof of going forward and its action can not be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services did not act in compliance with department policy when it determined claimant's eligibility for Medical Assistance.

Accordingly, the department's action is, hereby, REVERSED. The department is to initiate a determination of claimant's alleged divestment of assets and divestment penalty in compliance with department policy and this decision and order.

/s/
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 9, 2011

Date Mailed: February 9, 2011

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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.

JAB/ db

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