

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: 2009-2026
Issue No: 2010
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 13, 2009
Livingston 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 claimant's request for a hearing. After due notice, a telephone hearing was held on January 13, 2009. Claimant was represented by attorney [REDACTED].

ISSUE

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

FINDINGS OF FACT

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

- (1) August 8, 2008, claimant applied for MA and retroactive MA benefits. Claimant entered long term care on or about May 9, 2008.
- (2) December 4, 2007, claimant's daughter filed petition with circuit court for protective order and requesting payment from claimant for care back to March 2007. The court

granted the protective order and payment to daughter for expenses incurred in her mother's care as so stated by claimant's daughter. Claimant A.

(3) On or about September 2008, the department determined that claimant was ineligible for Medical Assistance for a period of two months and 18 days due to divestment of assets. The first month of ineligibility was June 2008. Department A, page 3.

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).

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

When determining eligibility for MA, the applicant and other responsible parties' assets must be evaluated. All assets that are not specifically excluded must be counted when determining MA eligibility. Department policy provides that persons or households who hold more assets than allowed are not eligible for MA. Parties who expect to enter long term care and apply for MA must not transfer or refuse assets for the purpose of reducing assets to below the department limit and so qualify for MA benefits. When a person or party transfers or refuses assets for this purpose, it is called divestment and results in a penalty period of ineligibility. This policy includes transfers by parents for minors, legal guardians, conservators, courts, or anyone acting in place of, on behalf of, at the request of or at the direction of the applicant or spouse of applicant. Transfers for purposes other than to qualify for MA are not divestment.

Department policy instructs caseworkers to look back to the time frame prior to the party's application for assistance to determine whether divestment has occurred. First the department must establish a baseline date. For applicants, the baseline date is the first date he or she is an MA applicant and resides in a long term care facility (LTC). The look back period for most assets is 60 months. Assets transferred or refused during that period must be assessed for divestment. The first month where divestment occurred will be the first month of the penalty period. The department may reassess the penalty if undue hardship is proved.

When determining the length of the MA ineligibility penalty period, the department must determine the total amount divested during the look back period. The department must divide the divested amount by the average monthly cost of care in a long term care facility. Full and partial months are added together and constitute the divestment ineligibility period. For 2008, the average monthly LTC cost is \$6,191.00.

Sources of verification of transfers may include, but are not limited to legal documents, payment or tax records, bills of sale, court records, correspondence regarding the transaction, and bank books or statements.

Bridges Eligibility Manual (BEM) 405
LEGAL BASE
Social Security Act, Sections 1902(a)(18), 1917.

In this case, claimant entered LTC during May 2008. In December 2007, claimant's daughter asserted to the circuit court that she wished to be reimbursed for past expenses incurred in her mother's care; however, the record contains no objective evidence to establish that daughter charged her mother for care at the time services were provided or that there was a prior agreement to that effect. The court order grants daughter's petition, but does not establish that there was a charge for services at the time they were provided. Accordingly, the transfer of funds for services provided prior to December 2007 are for less than fair market value and occurred during the look-back period. Claimant is afflicted with Alzheimer's and so it is reasonable that claimant's daughter would have expected for claimant to enter long term care.

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The record contains no evidence of undue hardship as set forth in department policy. Therefore, the department has met its burden of proof and its action must be upheld. Finding of Fact 1-3; BEM 405.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services acted in compliance with department policy when it determined claimant's eligibility for Medical Assistance benefits.

Accordingly, the department's action is **HEREBY UPHELD**.

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

Date Signed: September 30, 2009

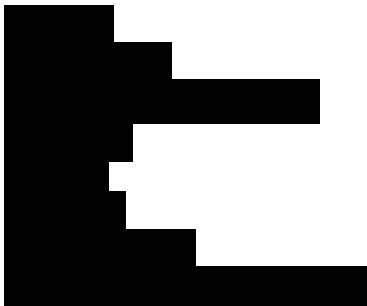
Date Mailed: October 1, 2009

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.

JAB/db

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