

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: 2009-990

Issue No: 2010

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 28, 2009

Delta County DHS

ADMINISTRATIVE LAW JUDGE: Janice 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, a telephone conference hearing was held on July 28, 2009. Claimant was represented by [REDACTED], representing claimant's guardian-- [REDACTED].

ISSUE

Did the Department of Human Services (DHS) properly calculate a divestment penalty?

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 7/3/08, claimant applied for MA for LTC.
- (2) On 8/14/08, the department processed and opened the case. The case was sent and reviewed in Lansing by an auditor resulting in an audit finding divestment when a vehicle owned by claimant was given away in June, 2008.

(3) The auditor's statement found on Exhibit 34 fails to cite specific authority with regards to State policy or federal law.

(4) The department stipulated that the vehicle was exempt in June, 2008, and if retained would have been exempt in July, 2008.

(5) On 9/15/08, the department issued notice informing claimant that a divestment policy was applied for one month of LTC.

(6) On 9/22/08, claimant filed a hearing request.

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).

Applicable policy to the case herein states in part:

MA Divestment - PEM Item 405

Transfers for another purpose: ... Transfers exclusively for a purpose other than to qualify or remain eligible for MA are not divestment. PEM Item 405, p. 9.

In this case unrefuted evidence on the record and stipulated to by the department is that the vehicle which was owned by claimant in June, 2008 was exempt. Moreover, the department testified that the vehicle if not given away would have been exempt in July, 2008. This Administrative Law Judge finds that under PEM Item 405, p. 9, cited above, claimant did not transfer the vehicle to become eligible for MA as claimant would have been eligible had she kept the vehicle. The vehicle was exempt when she had it, and would not have been counted had she kept it in the month of application. Thus, the transfer was exclusively for a purpose other than to

qualify or remain eligible for MA per PEM Item 405, p. 9. This Administrative Law Judge reverses the department's divestment penalty. It is noted that this policy is consistent with federal law found at 42 USC §1382b(c)(1)(C)(iii)(II).

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 finding of divestment for one month is hereby REVERSED, and, the department is ORDERED to remove the divestment penalty and issue any supplemental benefits to claimant to which she may be entitled.

/s/ _____
Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 13, 2009

Date Mailed: August 14, 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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JS/cv

cc:

