

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

IN THE MATTER OF:

[REDACTED]

Reg No. 201011251
Issue No. 2010
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: February 10, 2010
St. Clair 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 the claimant's request for a hearing. After due notice, a telephone hearing was held on February 10, 2010. Claimant did not appear; however, he was represented by [REDACTED].

ISSUE

Did the department properly apply a divestment penalty to claimant's long-term care Medicaid (MA) case and properly calculate the penalty end date?

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 October 30, 2008, the department received an MA long-term care application on behalf of claimant and his spouse because both of them entered skilled residential care (Date of Entry: [REDACTED]).
2. Initially, the department imposed an MA divestment penalty on each of their long-term care cases, scheduled to run from October 1, 2008 through January 6, 2011.
3. On [REDACTED], claimant's spouse died before her divestment period ended.

4. On May 27, 2009, the department's MA Policy Unit instructed the local office to add the remainder of claimant's spouse's divestment period onto claimant's divestment period (Department Exhibit 1, pg. 11).
5. Consequently, on May 27, 2009, the local office mailed claimant's authorized representative (DPOA) written notice which states claimant's revised divestment penalty period would now run from October 1, 2008 through August 12, 2013, which equals 57 months and 12 days total, from beginning to end (Department Exhibit 1, pgs. 1 and 8).
6. On July 9, 2009, claimant's attorney filed a timely hearing request, held by conference telephone on February 10, 2010.
7. Claimant's attorney argued at hearing the spouse's part of this divestment penalty died when she did; consequently, the original divestment penalty end date (1/6/11) must be retained.
8. In the alternative, claimant's attorney argued the local office miscalculated the new divestment penalty period; he contended the period should end on August 18, 2012, not August 12, 2013 (See also Finding of Fact #5 above).

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).

Divestment of assets means transferring resources (including gifting money to others) owned by either spouse separately or jointly within a specified, retroactive time period before he, she or they enter long-term care. BEM Item 405, pgs. 1, 2 and 5. In this case, claimant and his spouse entered long-term care together on September 26, 2008.

Immediately preceding entry (specifically in September and October 2008), the acting DPOA transferred [REDACTED] from their respective bank accounts, according to a supplemental brief submitted by claimant's attorney while this case was pending (Brief—Summary Of Arguments On Hearing, See pg. 1). In response, the department imposed half the total divestment penalty period on each spouse (27 months/6 days), which is completely correct and consistent with the calculation and spousal penalty sharing provisions set forth in BEM Item 405. No objection, protest or hearing request was made until the department revised (lengthened) claimant's penalty period at his wife's death.

Although claimant's counsel argued claimant's wife's part of the divestment penalty must die with her, he provided absolutely no basis in policy or law to support this position. In the alternative, the department's policy is clear. By existing explanation and example, this policy states:

A client can be penalized if he or his spouse divests. The penalty is imposed on whichever spouse is in a Penalty Situation; see BEM 211, MA Group Composition. If both spouses are in a penalty situation, the penalty period (or any remaining part) must be divided between them.

Example: Mr. and Mrs. Brown divested themselves of assets prior to Mr. Brown entering a LTC facility and applying for Medicaid. Mr. Brown is in LTC and under a divestment penalty for 24 months. When Mrs. Brown enters the facility 6 months later, the remaining 18 months of Mr. Brown's penalty are divided between them, giving Mr. and Mrs. Brown each 9 months of the penalty still to complete. If either Mr. or Mrs. Brown die before they complete their penalty the remainder of their penalty is transferred to their spouse.

As such, the department had no alternative but to transfer the remainder of claimant's wife's penalty period to him.

However, the correct application of the above-referenced policy requires only that portion of the divestment penalty not already served (the "remainder") to be added on to claimant's (the surviving spouse's) penalty period.

On claimant's spouse's death date (██████████), she had already served 7 months and 24 days of her divestment penalty, which was determined to be 27 months and 6 days total at application. Therefore, only that portion not yet served (approximately 19 months plus some additional single days) is all the department can add to claimant's January 6, 2011 divestment penalty end date. In short, the end date currently being proposed (8/12/13) simply is too long, and thus, it must be recalculated with written notice of the correct divestment period sent to claimant's attorney and to his DPOA. At that time, they can file another timely hearing request if they disagree with the department's updated determination.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly applied a divestment penalty to claimant's long-term care MA case, but erroneously calculated the penalty end date when his wife died.

Accordingly, this case is returned to the local office for revision of claimant's divestment period end date consistent with the policy cited herein. **SO ORDERED.**

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

Date Signed: December 2, 2010

Date Mailed: December 3, 2010

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.

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