

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],

Claimant

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-30567

Issue No: 2010

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 16, 2010

Grand Traverse County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

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 three-way telephone hearing was held on September 16, 2010, with Manistee and Traverse City. Claimant resides in a long-term care facility and did not appear at the hearing due to frail health. Claimant was represented at the hearing by [REDACTED]

The department was represented by Leann Thomas, (Medicaid Specialist) from Manistee and Debra Prohaska (Program Manager from Traverse City).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUE

Did the department correctly impose a divestment penalty on claimant's MA-LTC application (October 29, 2009) because claimant's husband gave \$25,000 to claimant's children seven days prior to the date claimant entered the long-term care facility?

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 resides in a long-term care facility and is an MA-LTC applicant.
- (2) Claimant is 87 years old and entered the long-term care facility on May 18, 2009.

For Medicaid purposes, claimant has a life expectancy of 4.73 years.

(3) On May 11, 2009, claimant's husband transferred \$25,000 of joint assets to claimant's two children, subject to a \$25,000 Promissory Note. The Promissory Note carries an interest rate of 4%. Under the terms of the note, the children are obligated to make principle payments to claimant and her husband of \$1,000 a year. The amortization period for the Promissory Note is 25 years.

(4) On May 18, 2009, claimant entered the long-term care facility. Her current life expectancy is 4.73 years.

(5) On October 29, 2009, claimant applied for long-term care. Claimant reported the \$25,000 Promissory Note (asset transfer) to the department at the time of application.

(6) The department reviewed claimant's Promissory Note to determine whether it was actuarially sound. Since claimant's life expectancy is 4.73 and the required amortization payments, on the \$25,000 Promissory Note, is \$5,285.

(7) To determine whether claimant was eligible for MA-LTC on the date of application, the caseworker was required to determine whether claimant's Promissory Note was actuarially sound, based on department policy.

(8) The caseworker used the department's Actuarial Tables (BEM 405). The caseworker determined that the Promissory Note's amortization (25 years) exceeded claimant's life expectancy (4.73 years).

(9) On January 9, 2010, the caseworker sent claimant a Notice of Case Action (DHS-1605). Claimant's application for ongoing MA-LTC benefits starting December 1, 2009 was denied.

(10) On January 29, 2010, claimant requested a hearing on the denial of MA-LTC effective December 1, 2009.

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 policy which governs claimant's MA-LTC eligibility is:

MA Only

Divestment results in a penalty period in MA, **not** ineligibility. Divestment policy does **not** apply to Qualified Working Individuals (BEM 169).

Divestment is a type of transfer of a resource and not an amount of resources transferred.

Divestment means a transfer of a resource (see RESOURCE DEFINED below) by a client or his spouse that:

- Is within a specified time (see "LOOK-BACK PERIOD" below), and

- . Is a transfer for “LESS THAN FAIR MARKET VALUE,” and

Note: See “Annuity Not Actuarially Sound” and “Joint Owners and Transfers” below and BEM 401 about special transactions considered transfers for less than fair market value.

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.
- . Home and community-based services.
- . Home help.
- . Home health.

MA will pay for other MA-covered services.

Do **not** apply a divestment penalty period when it creates an undue hardship. See “UNDUE HARDSHIP” below.

* * *

RESOURCE DEFINED

Resource means all the client’s and his spouse’s assets and income. It includes all assets and all income, even countable and/or excluded assets, the individual or spouse receive. It also includes all assets and income that the individual (or their spouse) were entitled to but did **not** receive because of any action by one of the following:

- . The client or spouse
- . A person (including a court or administrative body) with legal authority to act in place of or on behalf of the client or his spouse.
- . Any person (including a court or administrative body) acting at the direction or upon the request of the client or his spouse.

TRANSFER OF A RESOURCE

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 for fair market value (not divestment).
- . Giving an asset away (divestment).
- . Refusing an inheritance (divestment).
- . Payments from a “**MEDICAID TRUST**” that are **not** to, or for the benefit of, the person or his spouse. See BEM 401 (divestment).
- . Putting assets or income in a trust.
- . Giving up the **right** to receive income such as having pension payments made to someone else (divestment).
- . Giving away a lump sum or accumulated benefit (divestment).
- . Buying an annuity that is **not** actuarially sound (divestment).
- . Giving away a vehicle (divestment).

BEM 405, pp. 1/16.

In this case, claimant’s attorney argued that the department’s decision not to provide benefits for the period beginning December 2009 was not correct.

After a careful review of the Exhibits and testimony presented in this case, the Administrative Law Judge concludes that the department correctly denied claimant MA-LTC coverage effective December 1, 2009 and correctly determined that claimant’s Promissory Note (May 11, 2009) is not actuarially sound because it resulted in a transfer of claimant’s assets (\$25,000) which were not available to pay claimant’s long-term care expenses during claimant’s actuarial life.

The department's current policy requires that claimant use the contested \$25,000 to pay her long-term care expenses. However, under the provisions of the May 2009 Promissory Note, the \$25,000 which claimant transferred to her children will not be repaid to claimant during her actuarial lifetime.

The Administrative Law Judge concludes that the department's decision to deny benefits effective December 1, 2009 due to the issuance of a Promissory Note which does not meet the department's MA-LTC requirements is correct.

Furthermore, there is no evidence on this record of any arbitrary or capricious action on behalf of the department.

Therefore, the department correctly denied claimant's MA-LTC coverage because claimant's husband used a non-actuarially sound Promissory Note to transfer \$25,000 to claimant's children, contrary to the department's MA-LTC policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department acted in accordance with its MA-LTC eligibility policy by denying MA-LTC benefits for the period, December 1, 2009 forward.

Accordingly, the department's actions are hereby, AFFIRMED.

SO ORDERED.

/S/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 12, 2010

Date Mailed: November 12, 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 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.

JWS/tg

cc:

