

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],

Claimant

By: [REDACTED]
[REDACTED]

Reg. No: 2010-41257

Issue No: 2010

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 16, 2010
Allegan 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 telephone hearing was held on September 16, 2010 in Allegan. Claimant is deceased. Claimant was represented by [REDACTED].

The department was represented by Mariah Schaefer (AP Supervisor) and Lisa Langsdale (ES).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUE

Did the department correctly impose a divestment period of one month 14 days on claimant's MA-LTC eligibility because claimant and his spouse tithed \$9,450 to their church between February 9, 2006 and October 5, 2009?

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 is an MA-LTC applicant. Claimant's date of death is February 23, 2010.

(2) Claimant and his spouse have been lifetime members of the [REDACTED].

(3) During the period of February 9, 2006 to October 5, 2009, claimant and his spouse gave \$9,450 to the church, with no intention of making claimant eligible for MA-LTC.

(4) On October 5, 2009, claimant entered the long-term care facility.

(5) On December 2, 2009, claimant's spouse applied for LTC benefits to pay claimant's long-term care expenses.

(6) On February 24, 2010, the caseworker decided that claimant's MA-LTC application would be subjected to a divestment period of one month and 14 days.

(7) Claimant agrees that the divestment period was correctly calculated.

(8) Claimant thinks that tithes to a church are exempt assets for MA-LTC for eligibility purposes and that the department erred by applying its divestment policy to his MA-LTC application.

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).

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.

It 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 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 and his spouse gave money to their local church as they have done for many years. For the period in question, February 9, 2006 to October 5, 2009, claimant and his spouse gave their church \$9,450. There is no evidence the motivation for the tithes made to the church were for the purpose of circumventing MA eligibility rules.

After a careful review of the Exhibits and testimony presented in this case, the Administrative Law Judge concludes that the department correctly applied the MA divestment policy and correctly determined that the \$9,450 in tithes which claimant and his spouse made to the church constituted divestment for MA-LTC eligibility purposes. Divestment occurred because the \$9,450 was not available to pay claimant's long-term care expenses during the period in question.

The department's current MA-LTC policy requires that the \$9,450 which was given to the church be used to pay claimant's LTC expenses. BEM 405, above.

Claimant does not contest the accuracy of the disqualification period. He simply thinks that the amount given to the church should not be used to compute a period of ineligibility for MA-LTC. The divestment policy found at BEM 405, page 1, simply says that giving away assets which would otherwise be available to pay long-term care costs within the look-back period must be considered when determining MA-LTC eligibility.

The Administrative Law Judge concludes that the department correctly found divestment of the \$9,450 that was given to the church during the disputed period.

There is no evidence on this record of arbitrary or capricious action on behalf of the department. Therefore, the department correctly imposed a one-month and 14-day period of ineligibility for MA-LTC due to divestment.

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 divestment policy when it imposed a divestment penalty on claimant's MA-LTC application of one month and 14 days.

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: October 7, 2010

Date Mailed: October 8, 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:

