

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 201115979
Issue No: 2010
Case No: [REDACTED]
Hearing Date: May 18, 2011
Mecosta County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

HEARING DECISION

This matter is before the undersigned Administrative Law Judge (ALJ) 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 May 18, 2011. The claimant appeared and testified.

ISSUE

Do ALJ's have authority to grant equitable decisions?

FINDINGS OF FACT

The ALJ based upon the competent, material, and substantial evidence on the whole record, finds a material fact:

- (1) On [REDACTED], claimant sold her home to a son and retained a life estate.
- (2) In 2005, the claimant was approved for MA deductible.
- (3) On [REDACTED], the claimant had terminated her life estate.
- (4) On [REDACTED], the claimant went into [REDACTED] with an active deductible and applied for full MA.
- (5) On January 11, 2011, claimant's MA application was approved with divestment penalty.

- (6) Claimant's daughter and one of her other son's agreed DHS' decision was in accordance with DHS' policy and followed correctly in determining the amount of divestment.
- (7) The daughter and son want an exception to the policy based on the son who owns the property and his attorney who are taking advantage of the claimant in forcing her to give up her life estate in the property.

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 facts above are undisputed:

Administrative law judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals. Delegation of Hearing Authority, August 9, 2002, per PA 1939, Section 9, Act 280.

Based on the above undisputed facts and the DHS policy, this ALJ has no legal authority to grant the claimant's request exception to DHS policy requirements based on equitable considerations.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that ALJ's do not have legal authority to grant equitable decision.

Accordingly, MA approval with a divestment penalty is UPHeld and the hearing request is DISMISSED.

/s/
William Sundquist
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 31, 2011

Date Mailed: May 31, 2011

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.

WAS/ar

cc:

