

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

IN THE MATTER OF:

[REDACTED]

[REDACTED]

Kent County DHS-41

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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, an in person hearing was held on September 8, 2011. Claimant's power of attorney [REDACTED] appeared and testified. The Claimant's [REDACTED] appeared also. The Department was represented by [REDACTED] and [REDACTED].

ISSUE

Was the Department correct in determining Claimant's MA-LTC eligibility?

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 was an ongoing recipient of MA-LTC.
2. Pursuant to an audit the Department determined that divestment occurred regarding two transactions, the formation of a promissory note and repair work done on a residence.
3. Claimant signed a promissory note in July 2007 in the amount of [REDACTED].
4. Claimant paid for repair work on the home of a family member in the amount of [REDACTED] in December 2007.
5. The Department determined that divestment occurred in the amount of [REDACTED] and a divestment penalty period was imposed from May 1, 2011 to October 15, 2011.

6. Claimant's Power of Attorney requested a hearing on April 28, 2011 contesting the determination of divestment.
7. At the time of application, the Department reviewed these two transactions and did not find divestment.

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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM). The Medical Assistance program was designed to assist needy persons with medical expenses

The State of Michigan has set guidelines for income and assets, which determines if a MA group falls within the needy classification. MA ASSET ELIGIBILITY LIF, G2U, G2C, AMP and SSI-Related MA Only

Asset eligibility is required for LIF, G2U, G2C, AMP and SSI-related MA categories.

Note: Do **not** deny or terminate TMA-Plus, Healthy Kids or Group 2 Pregnant Women because of a refusal to provide asset information or asset verification requested for purposes of determining LIF, G2U, G2C or SSI-related MA eligibility. Use the special asset rules in [BEM 402](#) for certain married L/H and waiver patients. See BPG Glossary, for the definition of L/H patient and [BEM 106](#) for the definition of waiver patient. Asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400

Department policy address specific types of transfers that are not divestment—

Transfers for Another Purpose

As explained below, transfers exclusively for a purpose other than to qualify or remain eligible for MA are **not** divestment.

Assume transfers for less than fair market value were for eligibility purposes until the client or spouse provides convincing evidence that they had no reason to believe LTC or waiver services might be needed. BEM 405 p.8

In the present case, Claimant correctly points out that the promissory note comports with Department policy and Federal regulations(42 USC 1396p(c)(1)(I)) in that it is actuarially sound, pays out in equal installments, and has a non-cancellation clause upon the death of the recipient. Claimant further correctly points out that the repair work done on the home of a relative was done for another purpose (in anticipation of Claimant moving into the home several years earlier) and not in anticipation of needing nursing

home coverage from Medicaid. BEM 405 Divestment has not occurred in this case as the Department correctly determined at the time of application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that the Department was incorrect in the closure of Claimant's MA case, and it is ORDERED that the Department's decision in this regard be and is hereby REVERSED. The MA divestment penalty shall be lifted and MA benefits shall be reinstated back to the beginning of the penalty period.



Aaron McClintic
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 9/27/11

Date Mailed: 9/27/11

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 60 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.

AM/ds

