

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-34677
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: August 31, 2011
Macomb County DHS (12)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon Claimant's request for a hearing made pursuant to MCL 400.9 and MCL 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was conducted from Detroit, Michigan on Wednesday, August 31, 2011. The Claimant did not appear. The Claimant was represented by [REDACTED] of the [REDACTED]. [REDACTED] appeared and testified. [REDACTED] appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly imposed a divestment penalty based on the transfer to an Exception B, Pooled Trust for less than fair market value?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant resides in a long-term care facility.
2. The Claimant is over the age of 65.
3. On [REDACTED] the Probate Court registered the Claimant's trust.
4. On [REDACTED], \$9,425.48 was transferred from one pooled trust account, for the benefit of the Claimant, to another pooled trust account, for the benefit of the Claimant. (Exhibit 2)

5. On March 7, 2011, as a result of the transfer, the Department determined that divestment had occurred. (Exhibit 1)
6. On April 4, 2011, the Department sent a Notice of Case Action informing the Claimant that Medicaid benefits would not be paid from January through May 9, 2011 based on a transfer of assets or income for less than fair market value. (Exhibit 4)
7. On May 4, 2011, the Department received the Claimant's timely written request for hearing.

CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397 and is administered by the Department of Human Services, formerly known as the Family Independence Agency, 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 Bridges Reference Tables ("RFT").

A Medicaid trust is defined by 42 USC 1396p and interpreted in BEM 401. A Pooled Trust must contain resources of a person who is disabled and must be managed by a nonprofit association. BEM 401. Similar to a Special Needs Trust, a Pooled Trust must also contain language that after the person's death, the trustee has an automatic duty to repay Medicaid if any funds are distributed. BEM 401. In October 2010, BEM 401 provided that transfers to an Exception B, Pooled Trust by a person age 65 or older may be a divestment.

Divestment results in a penalty period in MA, not ineligibility. BEM 405. Divestment means a transfer of a resource by a client (or spouse) that is within the look-back period and is transferred for less than fair market value ("FMV"). BEM 405. Less than FMV means the compensation received in return for a resource was worth less than the FMV of the resource. BEM 405. During the penalty period, MA will not pay for long-term care services. BEM 405. Transferring a resource means giving up all or partial ownership in, or rights to, a resource. BEM 405.

In this case, the record shows that in [REDACTED], \$9,425.48, that was already in an Exception B, Pooled Trust ("Trust") account for the benefit of the Claimant, was moved within the Trust, to another pooled trust account, again for the benefit of the Claimant. There was no evidence that "new" funds were transferred to the Trust. There was no evidence that assets or income were transferred for less than fair market value. Ultimately, it is found that the Department failed to establish that the \$9,425.48

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movement of funds within the Trust was a divestment warranting the imposition of the divestment penalty. The divestment penalty is not applicable. Accordingly, the April 4, 2011 imposition of the divestment penalty is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department failed to establish it acted in accordance with Department policy when it imposed the divestment penalty.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The divestment penalty for the period from January 1, 2011 through May 9, 2011 is not imposed.
3. The Department shall supplement for lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: September 9, 2011

Date Mailed: September 9, 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

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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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