

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-42035
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: September 7, 2011
Macomb County DHS (12)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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, a hearing was held in Clinton Township, Michigan on Wednesday, September 7, 2011. The Claimant did not appear however; her Authorized Hearing Representative appeared on her behalf. The Claimant's daughter, [REDACTED], appeared and testified. [REDACTED] appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly determined divestment occurred warranting the imposition of the divestment penalty?

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 is a MA recipient.
2. On [REDACTED] the Claimant entered into a Land Contract selling her home to her son for \$1,000.00/month for a total of \$180,000.00.
3. On [REDACTED] the Claimant signed an Addendum to the [REDACTED] Land Contract lowering the sale price of the home to \$108,000.00. (Exhibit 4)

4. As a result of the reduction in sale price, the Department determined and a \$72,000.00 divestment occurred.
5. The Department notified the Claimant of the determination and of the divestment penalty.
6. On July 20, 2011, the Department received the Claimant's timely written request for hearing.

CONCLUSIONS OF LAW

The Medical Assistance program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations. 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 Bridges Reference Manual ("RFT").

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. When a person gives up the right to receive income, the FMV is the total amount of income the person could have expected to receive. BEM 405. Transferring a resource means giving up all or partial ownership in, or rights to, a resource. BEM 405. During the penalty period, MA will not pay for long-term care services. BEM 405.

In this case, in [REDACTED] the Claimant executed a Land Contract with her son for the sale of her residence wherein she was entitled to receive \$1,000.00/month for a total selling price of \$180,000.00. In [REDACTED] the Claimant signed an Addendum to the Land Contract reducing the selling price to \$108,000.00, a difference of \$72,000.00. In essence the Addendum states that the original purchase price contained in the Land Contract was erroneous and that the correct figure was \$108,000.00. The assertion that an error occurred when the [REDACTED] Land Contract was executed is simply not believable. The Land Contract not only spells out the \$180,000.00 selling price but also spells out the remaining balance of \$179,000.00 which accounts for the \$1,000.00 payment to the Claimant. The more likely scenario is that the value of the home depreciated and the son took advantage of the reduced market without considering the consequence to the Claimant, a MA recipient. Regardless, the result remains the same. The Claimant gave up the right to receive \$72,000.00 as agreed to under the terms of the Land Contract. Ultimately, the Department properly determined that divestment

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occurred requiring the imposition of a penalty period. Accordingly, the Department's determination is AFFIRMED.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Department properly determined that a \$72,000.00 divestment occurred requiring the imposition of a penalty period.

Accordingly, it is ORDERED:

The Department's determination that divestment occurred resulting in imposition of the penalty period is AFFIRMED.



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

Date Signed: September 13, 2011

Date Mailed: September 13, 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 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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cc:

