

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

IN THE MATTER OF:

[REDACTED]

Reg No: 2011-30430

Issue No: 2021

[REDACTED]

Ingham County DHS-33

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge upon pursuant to MCL 400. 9; MCL 400.37 upon Claimant's request for a hearing. After due notice, a telephone hearing was held on July 20, 2010. The Claimant's daughter [REDACTED] appeared and testified. Claimant was also represented by [REDACTED] appeared on behalf of the Department.

ISSUE

Is the Department correct in determining Claimant's MA 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 applied for MA benefits on October 21, 2011.
- (2) On September 22, 2010 Claimant entered long term care.
- (3) On October 11, 2010 a Medicaid trust was established for the Claimant's community spouse with [REDACTED]
- (4) On October 14, 2010 Claimant's name was removed from an account containing [REDACTED]
- (5) Claimant's husband and daughter [REDACTED] were on the new account after Claimant's interest was extinguished.

- (6) A new account for Claimant was opened with [REDACTED]
- (7) Claimant's spouse died on December 10, 2010.
- (8) On March 4, 2011, Divestment of [REDACTED] was found and a penalty of 4 months and 17 days was calculated and imposed.
- (9) Claimant requested a hearing on April 12, 2011 contesting the denial of MA benefits and imposition of the divestment penalty.

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 (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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 outlines the standard of promptness--**FIP, SDA, RAP, CDC, MA and AMP Only** Certify program approval or denial of the application within 45 days.

MA Only

The SOP for an **initial asset assessment** begins the date the local office receives a signed DHS-4574-B, Assets Declaration. Complete the assessment and mail the client and spouse a notice within 45 days; BAM 115

TRANSFERS THAT ARE NOT DIVESTMENT

Transferring Excluded Income

Transferring income that is **not** countable income for SSI-related MA according to BEM 500 is **not** divestment.

Transfers Involving Spouse

It is **not** divestment to transfer resources from the client to:

- The client's spouse.
- Another SOLELY FOR THE BENEFIT OF the client's spouse.

Transfers from the client's spouse to another SOLELY FOR THE BENEFIT OF the client's spouse are **not** divestment.

Joint Owners and Transfers

When a client jointly owns a resource with another person(s), any action by the client or by another owner that reduces or eliminates the client's ownership or control is considered a transfer by the client. BEM 405

In the present case, Claimant argued at hearing that divestment did not occur because Claimant's name was removed from an account that belonged to her husband and transfers between spouses are not divestment. BEM 405 The account that Claimant's name was taken off of was reopened in Claimant's

spouse's and daughter's name. Claimant's daughter is not blind or disabled. The exception for a spousal transfer does not apply.

This ALJ finds that the Department has acted in accordance with Department policy and law in imposing a divestment penalty on the Claimant. Divestment did occur and therefore a penalty is warranted. BEM 405

Claimant's attorney correctly pointed out that this application was not processed within the 45 day standard of promptness. If a hearing had been requested shortly after the standard of promptness had run then immediate processing could have been ordered. Other than that this Administrative Law Judge knows of no other remedy that policy would allow.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that the Department was correct in imposing a divestment penalty on the Claimant, and it is ORDERED that the Department's decision in this regard be and is hereby AFFIRMED.



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

Date Signed: 8/22/11

Date Mailed: 8/22/11

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

■ [REDACTED]