

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-40935
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: September 28, 2011
DHS County: Macomb (50-12)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, a telephone hearing was held on September 28, 2011, from Detroit, MI. Claimant was not present for the hearing. [REDACTED], Claimant's niece, appeared and testified. Claimant was represented by her attorney, [REDACTED]. The Department of Human Services (Department) was represented by [REDACTED].

ISSUE

Whether the Department of Human Services (DHS or Department) properly determined Claimant purchased a vehicle from her niece paying more than fair market value?

FINDINGS OF FACT

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

1. On August 24, 2010, Claimant's niece purchased a 2008 Saturn Vue from a dealership paying over \$20,000.
2. On September 2, 201, Claimant purchased the 2008 Saturn Vue from her niece for \$17, 645.
3. On October 22, 2010, Claimant applied for MA long-term care.
4. On December 8, 2010, the Department denied MA coverage for the month of October 2010 finding that Claimant overpaid for the vehicle she purchased from her niece based upon a Kelly Blue Book value (KBB).

5. On January 18, 2011, Claimant requested a hearing.

CONCLUSIONS OF LAW

MA-P 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 administers MA-P 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).

In the present case, the Department denied Claimant MA coverage based upon a finding that Claimant paid more than fair market value for the vehicle she purchased from her niece. The Department utilized the KBB fair market value and determined the vehicle in question was only worth \$10,750, not the \$17,645 Claimant paid. Claimant's attorney asserted that the Department is utilizing the asset section of policy, which is intended for use when qualifying a person for benefits, and this section of policy would not be appropriate when actually determining the fair value regarding a transaction.

However, the documents and exhibits presented clearly indicate the niece purchased the car from a dealer one month prior to selling it to her aunt. This would be considered an arm's-length transaction. The Department and Claimant's representative agree that Claimant's niece paid in excess of \$20,000 for the vehicle in question in August 2010, one month prior to selling it to her aunt. The vehicle was sold to Claimant for \$17,645.


After reviewing the evidence submitted for consideration, this Administrative Law Judge finds that Claimant, in fact, paid her niece the fair value for the vehicle in question and no divestment occurred.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department improperly applied policy.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to:

1. Initiate action to open Claimant's MA effective October 2010 and remove the divestment penalty.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: September 29, 2011

Date Mailed: September 29, 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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

JWO/pf

cc:

