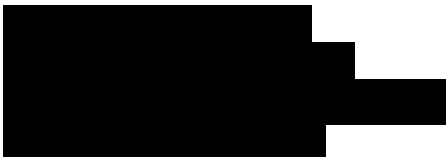


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2011-41951
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: January 31, 2013
County: Livingston

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in-person hearing was held on January 31, 2013, at the Livingston County DHS office. Participants on behalf of Claimant included her attorney, Ms. Nancy Nawrocki. Participants on behalf of Department of Human Services (Department) included General Services Program Manager Jared Bell, Eligibility Specialist Patty Holihan, Adult Protective Services, Karen Primrose, and Assistant Attorney General Geraldine Brown.

As an initial matter, this case is one of three for the same Claimant. Although the hearing summary in this case refers to a Certificate of Deposit and jewelry, they were decided in previous cases and are not at issue in this case. (See 2010-49483; 2012-33640; and 2012-39505).

ISSUE

Did the Department properly apply a divestment penalty to Claimant based on Claimant's daughter's purchase of personal and household goods?

FINDINGS OF FACT

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

1. Claimant applied for Medicaid on April 29, 2011. Claimant had been a resident of the nursing home since May 19, 2009.
2. On June 3, 2011, the department issued a Notice of Case Action indicating that Claimant was "not eligible for LTC services from 1/1/2011 through 6/12/2011 due to divestment."
3. On June 17, 2011, Claimant filed a Request for an In-Person Hearing contesting the penalty for divestment in regard to long term care services.

4. For ease of use, the receipts supplied by Claimant's daughter showed expenditures totaling \$9,743.47 in the month of June, 2009. Claimant's daughter purchased a copier/printer/scanner, computer, camera, violin and amplifier, a chair and two televisions in addition to numerous DVD's, printer ink and warranties.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by the 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.

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. BEM 105. Medicaid is also known as Medical Assistance ("MA"). *Id.* The Medicaid program is comprised of several categories; one category is for FIP recipients while another is for Supplemental Security Income ("SSI") recipients. *Id.* Programs for individuals not receiving FIP or SSI are based on eligibility factors in either the FIP or SSI program thus are categorized as either FIP-related or SSI-related. *Id.* To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formally blind or disabled. *Id.* FIP- and SSI-related Group 2 eligibility is possible even when net income exceeds the income limit because incurred medical expenses are considered. *Id.* Eligibility is determined on a calendar month basis. BEM 105. MA income eligibility exists for the calendar month tested when there is no excess income or allowable medical expenses that equal or exceed the excess income. BEM 545.

Divestment results in a penalty period in MA, not ineligibility. BEM 405. During the penalty period, MA will not pay for long-term care ("LTC") services. *Id.* 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"). *Id.* Transferring a resource means giving up all or partial ownership in, or rights to, a resource. *Id.* Resource means all the client's (and spouse's) assets and income. *Id.*; 20 CFR 416.1201. 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. *Id.*

The first step in determining the period of time that transfers can be looked at for divestment is to determine the baseline date. BEM 405. The baseline date is the date which the client was an MA applicant and in a long-term care facility. *Id.* After the baseline date is established, the look-back period is established. BEM 405. The look-back period is 60 months for all transfers made after February 8, 2006. *Id.* Transfers

made by anyone acting in place of, on behalf of, at the request of, or at the direction of the client/spouse during the look-back period are considered. *Id.*

In this case, the department contends that Claimant's daughter purchased items of personal property with Claimant's funds, which resulted in a divestment because the items were never used by Claimant or intended to be used by Claimant. The department maintains that the daughter purchased the items in an attempt to avoid using the money to pay for Claimant's long term care.

Claimant argues that the two televisions, violin and amplifier, the chair, the computer and accessories, and the copier and accessories are all household or personal goods and are therefore exempt.

Household goods and personal goods at the time of application were defined as:

Those items customarily found in the home and used in connection with the maintenance, use and occupancy of the premises. This includes items necessary for an adequate standard of sustenance, accommodation, comfort, information and entertainment of occupants and guests. Examples are appliances, furniture, television sets, carpets, cooking utensils, eating utensils and dishes.

Items of personal property that are worn or carried by a person that have intimate relationship to him. Examples are personal clothing and jewelry, personal care items, and educational or recreational items such as books, musical instruments or hobby material.

Here, it does not matter whether the items purchased by the daughter fit the definition of household goods or personal goods because they were never used by Claimant or kept in Claimant's home. Claimant has been in a long term care facility since May 19, 2009. Claimant's home is considered an exempt asset.

According to the daughter's testimony, the daughter was caring for Claimant in her home as Claimant could no longer care for herself in her own home. The daughter testified that when she could no longer care for Claimant in her home, Claimant was placed in the long term care facility. Claimant is 88 years old and has Alzheimer's.

The daughter testified that all of the items purchased are in the room of her home, which she refers to as Claimant's room, should Claimant ever return home. No evidence was presented that Claimant would ever return to her daughter's home or even to her own home. Evidence was presented by both Claimant's daughter and the department that Claimant was failing.

The daughter contends that Claimant's hobby was photography, and the computer and copier were used to print pictures for Claimant. Arguably, such items could be hobby material.

The daughter also testified that Claimant loved the violin but that the Claimant did not know how to play the violin and neither did the daughter. Therefore, although the violin is a musical instrument, it was purchased after Claimant was in the long term care facility, and Claimant has no intimate relationship to it as required by policy.

The Disney movies and other DVD's are not personal property as defined in policy because the items are not worn, carried by, or have an intimate relationship with the Claimant.

The chair and televisions set are examples of household goods as defined by policy.

According to BEM 400, a homestead that an owner formerly lived in, who resides in a long term care facility, is an excluded asset. BEM 400 (April 2011), p. 21. And in this case, the department properly determined that Claimant's home was an excluded asset.

Because the daughter's home was not the Claimant's, the purchasing of household and personal goods for that home was, in essence, a gift. The household asset exclusion relates only to the Medicaid recipient's home, not other family members (unless the home was previously owned by the Claimant). There was no evidence submitted that Claimant had previously owned the daughter's home.

Therefore, according to policy, all the aforementioned items are considered gifts because the homestead only applies to where the owner formerly lived, which is Claimant's home which has been excluded as an asset.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did act properly when it determined that Claimant was subject to a divestment penalty.

Accordingly, the Department's MA decision is **AFFIRMED**.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

The department shall recalculate the appropriate divestment penalty in accord with this decision and issue a new Notice of Case Action reflecting the divestment penalty.

/s/ _____
Vicki L. Armstrong
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 28, 2013

Date Mailed: March 1, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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.

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

VLA/las

cc:

