

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-22086
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: March 15, 2012
County: Ingham

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, a telephone hearing was held on March 15, 2012. [REDACTED], Claimant's daughter and personal representative, personally appeared and provided testimony

ISSUE

Did the department properly determine that Claimant had divested herself of assets and impose a penalty period?

FINDINGS OF FACT

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

1. Claimant was receiving MA at all times pertinent to this hearing with a base line date of May 19, 2010. (Department Exhibits 39, 42).
2. Claimant purchased a mobile home on March 30, 2009, for [REDACTED], of which she was the sole owner. (Department Exhibits 20-22).
3. Claimant failed to report the homestead on previous long term care applications. (Department Exhibits 44-47).
4. Claimant's personal representative provided the department the documents of the homestead transfer. On September 30, 2011, Claimant transferred her mobile home to [REDACTED]. (Department Exhibit 18).

5. Claimant's daughter informed the department that Claimant had not received any compensation for the mobile home, but had transferred the mobile home to her sister in lieu of payment of debts. (Department Exhibit 19).
6. Claimant's representative presented a [REDACTED] letter dated April 15, 2011, showing a tax debt of [REDACTED] paid to the [REDACTED] by [REDACTED], Claimant's sister. (Department Exhibits 23-25).
7. As of the date of hearing, no one had been appointed Claimant's guardian, power of attorney or authorized representative.
8. On November 22, 2011, the department mailed Claimant a Notice of Case Action informing Claimant that her MA application had been processed and she now had a divestment penalty due to the transfer of her mobile home without receiving adequate compensation for the value of the home. As a result, Claimant was not eligible for nursing home care from 10/1/11 to 12/10/11. (Department Exhibits 36-40).
9. On December 2, 2011, Claimant submitted a Request for Hearing contesting the department's negative action.

CONCLUSIONS OF LAW

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

Department policy states that divestment results in a penalty period in MA, **not** ineligibility. Divestment is a type of transfer of a resource and not an amount of resources transferred. Divestment means a transfer of a resource by a client or his spouse that are all of the following:

- Is within a specified time;
- Is a transfer for LESS THAN FAIR MARKET VALUE
- Is not listed below under TRANSFERS THAT ARE NOT DIVESTMENT

During the penalty period, MA will **not** pay the client's cost for:

- Long Term Care services.
- Home and community-based services.
- Home Help.
- Home Health.

MA will pay for other MA-covered services. BEM 405.

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. Not all transfers are divestment. Examples of transfers include:

- Selling an asset for fair market value (not divestment).
- Giving an asset away (divestment).
- Refusing an inheritance (divestment).
- Payments from a MEDICAID TRUST that are not to, or for the benefit of, the person or his spouse; see BEM 401 (divestment).
- Putting assets or income in a trust; see BEM 401.
- Giving up the right to receive income such as having pension payments made to someone else (divestment).
- Giving away a lump sum or accumulated benefit (divestment).
- Buying an annuity that is **not** actuarially sound (divestment).
- Giving away a vehicle (divestment).
- Putting assets or income into a Limited Liability Company (LLC).

The first step in determining the period of time that transfers can be looked at for divestment is determining the baseline date. A person's baseline date is the first date that the client was eligible for Medicaid and one of the following:

- In Long Term Care.
- APPROVED FOR THE WAIVER; see BEM 106.
- Eligible for Home Health services.
- Eligible for Home Help services. BEM 405.

A client's baseline date does **not** change even if one of the following happens:

- The client leaves Long Term Care.
- The client is no longer APPROVED FOR THE WAIVER; see BEM 106.
- The client no longer needs Home Help.
- The client no longer needs Home Health. BEM 405.

Once you have determined the baseline date, you determine the lookback period. The look back period is 60 months prior to the baseline date for all transfers made after February 8, 2006. Entire Period Transfers that occur on or after a client's baseline date

must be considered for divestment. In addition, transfers that occurred within the 60 month look-back period must be considered for divestment. BEM 405.

A divestment determination is not required unless, sometime during the month being tested, the client was in a penalty situation. To be in a penalty situation, the client must be eligible for MA (other than QDWI) and be one of the following:

- In an Long Term Care facility.
- APPROVED FOR THE WAIVER; see BEM 106.
- Eligible for Home Help.
- Eligible for Home Health. BEM 405.

Less than fair market value means the compensation received in return for a resource was worth less than the fair market value of the resource. That is, the amount received for the resource was less than what would have been received if the resource was offered in the open market. BEM 405.

Transfer of the following may be divestment:

- Homestead of L/H and waiver client (see BEM 106) or the L/H and waiver client's spouse even if the transfer occurred before the client was institutionalized or approved for the waiver.

It is **not** divestment to transfer a homestead to the client's:

- Spouse; see Transfers Involving Spouse above.
- Blind or disabled child; see Transfers Involving Child above.
- Child under age 21.
- Child age 21 or over who:
 - Lived in the homestead for at least two years immediately before the client's admission to LTC or BEM 106 waiver approval, and
 - Provided care that would otherwise have required LTC or BEM 106 waiver services, as documented by a physician's (M.D. or D.O.) statement.
- Brother or sister who:
 - Is part owner of the homestead, **and**
 - Lived in the homestead for at least one year immediately before the client's admission to LTC or BEM 106 waiver approval.

Assume transfers for less than fair market value were for eligibility purposes until the client or spouse provides convincing evidence that they had no reason to believe LTC or waiver services might be needed. BEM 405.

The department found that Claimant divested her assets when she transferred her mobile home to her sister without receiving fair market value. The department determined Claimant was approved for Medicaid effective May 19, 2010, but that the divestment penalty would sanction Claimant from October 1, 2011, through December 10, 2011.

Claimant's representative disputes the department's determination of divestment arguing that Claimant transferred the mobile home to her sister in lieu of debts Claimant owed her sister. However, Claimant's representative was unable to provide any proof of a debt owed by Claimant to her sister.

Department policy indicates that divestment occurs when a client or their spouse transfers a resource within the look-back period for less than fair market value. BEM 405. Transferring a resource means giving up all or partial ownership in (or rights to) a resource. BEM 405. Some transfers are not divestment. BEM 405. However, this transfer does not qualify under any of the exceptions listed in department policy. The homestead was not transferred to the client's spouse, a blind or disabled child, a child under age 21 or a child over age 21 who has lived in the homestead for at least two years before the client's admission to long-term care (LTC) and provided care that would otherwise have made the client need LTC or waiver services, or a brother or sister who were part owner of the homestead and lived in the homestead at least one year immediately before the client's admission to LTC or BEM 106 waiver approval. BEM 405. As a result, the department properly determined divestment applied in this case as the Claimant's ownership was transferred for less than fair market value.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, decides that the Department properly determined that Claimant had divested herself of assets and imposed a penalty period.

Accordingly, the Department's decision is AFFIRMED.

It is SO ORDERED.

/s/

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

Date Signed: 4/10/12

Date Mailed: 4/10/12

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 receipt 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.

VLA/ds

■ [REDACTED]