

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-30012
Issue No: 2010

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

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 [REDACTED]. The claimant did not appear, but was represented by [REDACTED]. The department witness was [REDACTED].

ISSUE

Did the department properly determine the 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, finds as material fact:

1. The claimant applied for Medicaid (Long Term Care or LTC) [REDACTED]. [REDACTED] The claimant listed a homestead on this application.
2. A redetermination application was submitted on [REDACTED]. This application did not list a homestead or report the sale of a homestead.
3. Branch County DHS received verification of the sale of homestead on [REDACTED].
4. The department then completed a budget, which showed the value of the homestead was \$21,680 (SEV of 10,840 x 2) and the sale was for \$3927. This resulted in a divestment of \$17,753 and a period of ineligibility for LTC services from [REDACTED].
5. The claimant was mailed a Notice of Case Action (DHS-1605) informing her of such on [REDACTED].
6. The claimant submitted a hearing request on [REDACTED].

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 (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 Bridges Reference Manual (RFT).

Department policy states:

MA DIVESTMENT

DEPARTMENT POLICY

MA ONLY

Divestment results in a penalty period in MA, **not** ineligibility. Divestment policy does **not** apply to Qualified Working Individuals (BEM 169). BEM, Item 405, p. 1.

Divestment means a transfer of a resource (see "RESOURCE DEFINED" below) by a client or his spouse that are all of the following:

- . is within a specified time (see "LOOK-BACK PERIOD" below), and
- . is a transfer for "LESS THAN FAIR MARKET VALUE," and
- . is not listed below under "TRANSFERS THAT ARE NOT DIVESTMENT."

Note: See Annuity Not Actuarially Sound and Joint Owners and Transfers below and BEM 401 about special transactions considered transfers for less than fair market value.

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

- . LTC services, and
- . home and community based services.
- . Home Help, or
- . Home Health.

MA will pay for other MA-covered services.

RESOURCE DEFINED

Resource means all the client's and his spouse's assets and income. It includes all assets and income, even countable and/or excluded assets, the individual or spouse receive. It also includes all assets and income that the individual (or their spouse) were entitled to but did not receive because of action by one of the following:

- The client or spouse.
- A person (including a court or administrative body) with legal authority to act in place of or on behalf of the client or the client's spouse.
- Any person (including a court or administrative body) acting at the direction or upon the request of the client or his spouse.

TRANSFER OF A RESOURCE

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)

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.

The same policy applies to resources the client's spouse owns jointly with other persons.

Exception: No penalty is imposed if the parties involved verify that the resource transferred actually belonged solely to the person to whom it was transferred.

Transferring Homestead to Family

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

- . spouse.
- . blind or disabled child.
- . 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.

Transfer for Another Purpose

As explained below, transfers exclusively for a purpose other than to qualify or remain eligible for MA are **not** divestment.

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.

Exception:

- . Preservation of an estate for heirs or to avoid probate court is **not** acceptable as another purpose.
- . That the asset or income is **not** counted for Medicaid does **not** make its transfer for another purpose.

Resources Returned

Cancel a divestment penalty if either of the following occurs before the penalty is in effect:

- . All the transferred resources are returned and retained by the individual.
- . Fair market value is paid for the resources.

Recalculate the penalty period if either of the following occurs while the penalty is in effect:

- . Some or all the transferred resources are returned.
- . Full compensation is paid for the resources.

Use the same per diem rate originally used to calculate the penalty period.

Once a divestment penalty is in effect, return of, or payment for, resources **cannot** eliminate any portion of the penalty period already past. However, recalculate the penalty period. The divestment penalty ends on the later of the following:

- . The end date of the new penalty period.
- . The date the client notified you that the resources were returned or paid for.

The department found the claimant to have divested of assets when the claimant sold her house for less than fair market value. The claimant's representative disputes the department's determination of the value of the claimant's house, arguing that the mobile home was not worth nearly the \$21,680 that the department used.

Department policy indicates that divestment occurs when a client or their spouse transfers a resource within the "look-back period" and for less than "fair market value". BEM 405. Less than fair market value means that 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 in an arm's length transaction. BEM 405.

The claimant's representative indicates the fair market value (FMV) of the home was not nearly the \$21,680 that the department computed as it was a mobile home that needed substantial repairs and did not even have running water at the time of the sale. The claimant's representative further testified that they had it for sale for \$5500 for at least six months and received no offers. The first offer they had received for was \$3927, which they accepted as it had been for sale for quite some time. The claimant's representative also provided two other comps of mobile homes sold in [REDACTED]. The first one had two mobile homes on ½ acre that sold for \$17,000. The second was a single [REDACTED] newer than claimant's on 1 full acre that sold for \$12,000. Claimant only had .19 acre.

The department points out that they took the State Equalized Value (\$10,840) and multiplied it by 2 to arrive at the FMV of \$21,680.

BEM 400 indicates that for SSI-related MA, the fair market value of real property and mobile homes is to be determined by using:

- Deed, mortgage, purchase agreement or contract.
- State equalized value (SEV) on current property tax records multiplied by two.
- Statement of real estate agent or financial institution.
- Attorney or court records.
- County records.

Fair market value is defined in the glossary as the amount of money the owner would receive in the local area for his asset (or his interest in an asset) if the asset (or his interest in the asset) was sold on short notice, possibly without the opportunity to realize the full potential of the investment. That is, what the owner would receive and a buyer would be willing to pay on the open market and in an arm's length transaction.

An arm length transaction is defined as a transaction between two parties who are not related and who are presumed to have roughly equal bargaining power. It consists of all of the following elements:

- It is voluntary
- Each party is acting in their own self-interest
- It is on an open market

By definition a transaction between two relatives is not an arm length transaction.

In this case, the department did not allege the sale of the mobile home to the purchaser, [REDACTED] was not an arm's length transaction, just that it was not FMV. Those familiar with the state of the current housing market know that the taxable value of a property does not necessarily accurately reflect the current market value, due to the downturn of the housing market. In many occasions, the taxable value or the SEV of a property is still significantly higher than the market will bear for the sale of the property. This Administrative Law Judge is persuaded that this is the case here, with the condition of the mobile home, the amount of time the property was placed for sale and the comps provided. Department policy indicates that 2 x the SEV can be used, but so can a purchase agreement, as long as it was conducted in an arm's length transaction and for fair market value. As fair market value may be sold on short notice and without the opportunity to realize the full potential of the investment, it may NOT be 2 x the SEV. Thus, this Administrative Law Judge finds it proper in this case to use the purchase agreement price as FMV, which was \$3927. Therefore, the claimant would not be subject to a divestment penalty.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly determined the claimant had divested himself of assets and imposed a penalty period.

Accordingly, the department's determination is **REVERSED**. The department shall use the claimant's purchase agreement price of \$3297 as the FMV of the property and shall not find any divestment occurred. The claimant shall be issued any retro MA benefits that she is entitled to receive. SO ORDERED.

/s/ _____

Suzanne L. Morris
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: [REDACTED]

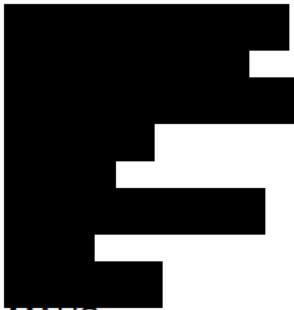
Date Mailed: [REDACTED]

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.

SM/jk

cc:



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