

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-10417
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: January 19, 2012
County: Oakland (63-03)

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 following Claimant's request for a hearing. After due notice, an in-person hearing was held on January 19, 2012, from Walled Lake, Michigan. Participants on behalf of Claimant included Claimant's spouse, [REDACTED], and her attorney, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly determine Claimant's transfer of funds constituted a divestment?

FINDINGS OF FACT

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

1. Beginning in 2006 through April 2011, Claimant and her spouse transferred funds in the amount of \$73,683.38 between her four children.
2. On April 15, 2011, each of Claimant's children signed separate promissory notes in the amount of \$18,420.85 plus 1% interest. The total amount of the promissory notes fully repaid the \$73,683.38 to Claimant's spouse.
3. The promissory notes in question are found to be actuarially sound, they are made in equal amounts during the term of the agreement with no deferral of payments or

balloon payments, and they are irrevocable and prohibit cancellation upon the death of the lender.

4. On July 28, 2011, Claimant submitted an application for medicaid nursing home care.
5. On September 15, 2011, the Department determined a divestment had occurred and instituted a divestment period.
6. On September 15, 2011, the Department sent a notice of case action to Claimant indicating a divestment penalty.
7. On October 3, 2011, Claimant, through her attorney, requested a hearing.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

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 Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA

program pursuant to MCL 400.10, *et seq.*, and 2000 AACRS, R 400.3151 through R 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

In the instant case, Claimant's family filed an application for benefits in July 2011. Claimant and her spouse transferred funds in the amount of \$73,683.38 between their four children over the last few years leading up to April 2011. On April 15, 2011, Claimant's four children each signed promissory notes for \$18,420.85 due to Claimant's spouse. The Department determined the promissory notes were, in fact, actuarially sound. The Department, however, determined the promissory notes failed to "cure" the funds transferred over the years from being a divestment.

Claimant, through her attorney, disagrees with the Department's decision. Claimant's attorney cites BEM 405, pg 12 as the basis for the Department's alleged error.

BEM 405, pg. 12, states:

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:

- 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, you must 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.

Claimant's attorney asserts the funds transferred were considered returned once the promissory notes were signed by Claimant's four children. The promissory notes were signed prior to the Department issuing a decision imposing a penalty. The Department made the decision to impose a penalty on September 15, 2011, well after the promissory notes were signed.

This Administrative Law Judge finds the funds in question are not a divestment. All transferred resources were returned and these funds were returned prior to the Department's finding of a divestment and prior to the Department instituting a penalty. Therefore, no divestment can be found to have occurred.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did error in determining a divestment had occurred.

Accordingly, the Department's MA decision is REVERSED for the reasons stated on the record.

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

1. Initiate removal of the divestment penalty imposed;
2. Provide a written notice of coverage instituted without a divestment penalty back to April 2011.



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

Date Signed: February 7, 2012

Date Mailed: February 7, 2012

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

JWO/pf

cc:

