

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-59605
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: January 7, 2013
County: Marquette

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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 hearing was held on January 7, 2013, in Marquette, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], [REDACTED], ES, and [REDACTED] FIM.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional legal briefs. The Department did not submit a brief in the time allowed in the Interim Order of January 16, 2013. This matter is therefore now before the undersigned for a final decision.

ISSUE

Did the Department properly determine that Claimant was no longer eligible to have Medicaid pay for his long-term/community-based services for the period of July 1, 2012 through February 13, 2015?

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 received Medicaid benefits.
2. On May 31, 2012, the Department issued to Claimant a benefit notice stating that Medicaid would not pay for Claimant's long-term care and home/community based

services from July 1, 2012 through February 13, 2015 due to Claimant or his spouse giving away assets or income for less than their value. (Exhibit 5, p.1)

3. On June 5, 2012, Claimant filed a hearing request, protesting the action of the Department. (Exhibit 5, p. 2)
4. At the hearing, the Department presented no documentary proof with regard to how it determined that Claimant or his spouse gave away assets or income for less than their value.
5. At the hearing, the Department presented no documentary proof as to how it calculated the penalty period of July 1, 2012 through February 13, 2015.

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.

In the present case, the Department imposed a penalty on Claimant's MA case from July 1, 2012 through February 13, 2015 because Claimant allegedly disbursed assets or income amounts that were less than their value. (Exhibit 5) The Department did not present documentary evidence to substantiate its reasoning for the penalty, and the Department did not present documentation showing how it calculated the penalty. However, the Department did not object to Claimant presenting evidence of quit claim deeds issued from Claimant to a trust and from the trust to Claimant. (Exhibit D, pp. 1-4) In addition, the Department did not object to Claimant presenting tax receipts corresponding to the real property associated with the quit claim deeds. (Exhibit C, pp, 5, 10)

The Department did not argue that the real property being transferred via quit claim deed was transferred or disbursed for less than its value. Rather, the Department argued that Claimant was required to distribute trust assets in equal amounts over Claimant's lifetime, and since Claimant did not do that, the Department was correct in imposing a penalty on Claimant's MA case.

BAM 220 instructs:

A notice of case action must specify the following:

- The action(s) being taken by the department.

- The reason(s) for the action.
- The specific manual item which cites the legal base for an action or the regulation or law itself.
- An explanation of the right to request a hearing.
- The conditions under which benefits are continued if a hearing is requested.

The Department did not state in its Benefit Notice of May 31, 2012 (Exhibit 5) that the reason for the negative action was that Claimant did not distribute trust assets in equal amounts over Claimant's lifetime; rather, the Department stated in its Benefit Notice that Claimant had disbursed assets and income amounts that were less than their value. Again, the Department presented no documentation showing that the real property or any other asset was less than its value when it was disbursed.

In addition, the Department presented no documentary proof as to how it calculated the penalty period of July 1, 2012 through February 13, 2015. Without such proof, it cannot be concluded that the Department was correct in its calculation of the penalty period.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department improperly determined that Claimant was no longer eligible to have Medicaid pay for his long-term/community-based services for the period of July 1, 2012 through February 13, 2015..

DECISION AND ORDER

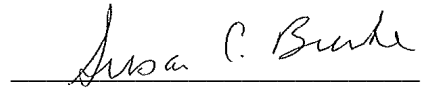
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did act properly. did not act properly.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED 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. Remove the penalty from Claimant's MA case.

2. Initiate reinstatement of Claimant's MA payment for long-term care and home/community based services, effective July 1, 2012, if Claimant is otherwise eligible for the benefit program.



Susan C. Burke
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 31, 2013

Date Mailed: February 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 mailing 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

SCB/tm

cc: 