

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

IN THE MATTER OF:

[REDACTED]

Reg No: 201277063
Issue No: 2021
Case No: [REDACTED]
Hearing Date: December 5, 2012
County DHS: Grand Traverse

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, an in-person hearing was held on December 5, 2012. Claimant's son, [REDACTED], appeared and testified. Claimant's Attorney, [REDACTED], also appeared. The Department was represented by [REDACTED]. [REDACTED], also appeared for the Department.

ISSUE

Was the Department correct in determining Claimant's Medical Assistance eligibility?

FINDINGS OF FACT

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

1. Claimant applied for MA benefits on [REDACTED].
2. Claimant was approved for Medicaid on [REDACTED].
3. The Department determined that divestment occurred in the amount of \$ [REDACTED] and imposed a divestment penalty period from June 1, 2012, to June 24, 2013.
4. Claimant agreed that divestment occurred in the amount of \$ [REDACTED] and asserted that a penalty period from June 1, 2012, through June 24, 2013, was the correct penalty period.
5. Claimant requested a hearing on [REDACTED], contesting the determination of divestment penalty period.

6. Claimant jointly owned with her son [REDACTED] a bond portfolio account with [REDACTED]. This account was established in March 1999. On [REDACTED], [REDACTED] withdrew \$ [REDACTED] from this joint account. This withdrawal was not divestment.
7. Claimant paid her son \$ [REDACTED] through a [REDACTED] account that was for travel reimbursement and is divestment.

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 (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 Program Reference Manual (PRM). 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 Program Reference Manual (PRM).

MA ASSET ELIGIBILITY

LIF, G2U, G2C, AMP and SSI-Related MA Only

Asset eligibility is required for LIF, G2U, G2C, AMP and SSI-related MA categories.

Note: Do **not** deny or terminate TMA-Plus, Healthy Kids or Group 2 Pregnant Women because of a refusal to provide asset information or asset verification requested for purposes of determining LIF, G2U, G2C or SSI-related MA eligibility.

Use the special asset rules in [BEM 402](#) for certain married L/H and waiver patients. See BPG Glossary, for the definition of L/H patient and [BEM 106](#) for the definition of waiver patient.

Asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400.

Department policy outlines the standard of promptness--**FIP, SDA, RAP, CDC, MA and AMP Only** Certify program approval or denial of the application within 45 days.

MA Only

The SOP for an **initial asset assessment** begins the date the local office receives a signed DHS-4574-B, Assets Declaration. Complete the assessment and mail the client and spouse a notice within 45 days; BAM 115

DEPARTMENT

POLICY MA ONLY

Divestment results in a penalty period in MA, **not** ineligibility. Divestment policy does **not** apply to Qualified Working Individuals; see BEM 169.

Divestment is a type of transfer of a resource and not an amount of resources transferred.

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

- Is within a specified time; see LOOK-BACK PERIOD in this item.
- Is a transfer for LESS THAN FAIR MARKET VALUE; see definition in glossary.
- 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.
- Home and community-based services.
- Home Help.
- Home Health.

MA will pay for other MA-covered services.

Do **not** apply a divestment penalty period when it creates an undue hardship; see UNDUE HARDSHIP in this item. BEM 405.

PENALTY PERIOD

No Maximum Penalty

There is no maximum limit on the penalty period for divestment. There is no minimum amount of resource transfer before incurring a penalty, determine a penalty on **any** amount of resources that are transferred and meet the definition of a divestment even if the penalty is for one day. Divestment is a type of transfer **not** an amount of transfer.

Any penalty period established under previous policy continues until it ends.

Apply the penalty policy in place at the time of transfer for any transfers made before February 8, 2006.

Computing Penalty Period

The penalty period is computed on the total Uncompensated Value of all resources divested.

Determine the Uncompensated Value for each resource transferred and combine into a total Uncompensated Value.

Divide the total Uncompensated Value by the average monthly private LTC Cost in Michigan for the client's Baseline Date. This gives the number of full months for the penalty period. Multiply the fraction remaining by 30 to determine the number of days for the penalty period in the remaining partial month.

Apply the total penalty months and days. Apply a penalty even if the total amount of the penalty is for only a partial month.

The penalty is applied to the months (or days) an individual is eligible for Medicaid and actually in LTC, Home Health, Home Help, or the MIChoice Waiver. The divestment penalty period cannot be applied to a period when the individual is not eligible for Medicaid for any reason (that is the case closes for **any** reason or is eligible for Medicaid but is **not** in LTC, Home Help, Home Health, or the MIChoice Waiver. Restart the penalty when the individual is again eligible for Medicaid and in LTC, Home Help, Home Health, or MIChoice Waiver. When a medical provider is paid by the individual, or by a third party on behalf of the individual, for medical services received, the individual is not eligible for

Medicaid in that month and the month is not a penalty month. That month cannot be counted as part of the penalty period. This does not include payments made by commercial insurance or Medicare.

Note: An individual is not eligible for MA in a month they have pre-paid for LTC. Because federal law directs that a resident in a nursing facility must have access to all monies held by the facility for the resident, count the money held by a nursing facility as cash.

A group 2 deductible eligible individual is not eligible for Medicaid until the deductible is met. Apply the penalty only to the days of the month after the deductible is met.

The 1st day the client is eligible to receive MA coverage for LTC, MIChoice, home help, or home health services are the 1st day after the penalty period ends.

Baseline Date In Calendar Yea	LTC Cost
2013	7631
2012	\$7032
2011	\$6816
2010	\$6618
2009	\$6362
2008	\$6191
2007	\$5938
2006	\$5549
2005	\$5367
2004	\$5250
2003	\$5043
2002	\$4703
2001	\$4518
2000	\$4331
1999	\$3981
1998	\$3711
1997	\$3507
Before January 1997	\$3441

The penalty period starts on the date which the individual is eligible for Medicaid and would otherwise be receiving

institutional level care (LTC, MIChoice waiver, or home help or home health services), and is not already part of a penalty period. When a medical provider is paid by the individual, or by a third party on behalf of the individual, for medical services received, the individual is not eligible for Medicaid in that month and the month is not a penalty month. That month cannot be counted as part of the penalty period. This does not include payments made by commercial insurance or Medicare.

Note: If a past unreported divestment is discovered or an agency error is made which should result in a penalty, a penalty must be determined under the policy in place at the time of discovery. If a penalty is determined for an unreported transfer in the past, apply the penalty from the first day after timely notice is given; see Recipient Exception in this item.

Recipient Exception

Timely notice must be given to LTC recipients and (BEM 106) waiver recipients before actually applying the penalty. Adequate notice must be given to new applicants. BEM 405.

In the present case, Claimant gifted her son \$ [REDACTED] on [REDACTED]. The Department determined that this was divestment and the Claimant does not dispute this.

Claimant jointly owned with her son [REDACTED] a bond portfolio account with [REDACTED]. This account was established in March 1999. On [REDACTED], [REDACTED] withdrew \$ [REDACTED] from this account. The Department determined that this withdrawal constituted divestment.

In July, 2010 Claimant transferred money to an account with [REDACTED]. After evaluating the withdrawals from this account the Department determined that \$ [REDACTED] was paid for Claimant's care and welfare and the remaining \$ [REDACTED] was paid for [REDACTED] travel and constituted divestment.

The Department determined that a total of \$ [REDACTED] was divested and imposed a divestment penalty from June 1, 2012, to June 24, 2013.

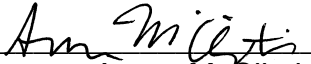
With regard to the bond portfolio with [REDACTED], the Claimant argues that this was an "other joint asset" and that an equal share for each owner can be deemed pursuant to BEM 400 page 9. Therefore, [REDACTED] removal of \$ [REDACTED] was his removal of his ½ share of the account and was; therefore, not divestment for the Claimant. Claimant points out that this account does not meet the definition of "cash" or "retirement plan" pursuant to Department definition and the only other category is "other joint asset". This Administrative Law Judge finds this argument persuasive and finds that [REDACTED] removal of his one half share of \$ [REDACTED] from the [REDACTED]

account was not divestment by the Claimant. Therefore, the Department's determination of divestment with regard to that transfer was improper and incorrect.

With regard to the [REDACTED] account, Claimant asserts that the monies paid to [REDACTED] were for reimbursement of travel expenses that were incurred as a result of [REDACTED] traveling to [REDACTED] to assist his mother with doctor's appointments, grocery shopping, home maintenance, financial management and other tasks. Claimant's son kept a fairly detailed log of his travel related expenses. At hearing, Claimant provided a hand written statement dated [REDACTED], which was signed by both the Claimant and [REDACTED]. This statement is not notarized. This statement makes no reference to reimbursement for travel expenses or what rate travel expenses may be paid. It makes no reference to the [REDACTED] account. This document does not have sufficient specificity to create an obligation for payment for the travel expenses [REDACTED] incurred related to Claimant. Department policy in BEM 405 is fairly clear and straightforward that relatives who provide assistance or services are presumed to do so for love and affection, and compensation for past assistance or services shall create a rebuttable presumption of a transfer for less than fair market value. Claimant has failed to rebut that presumption. Therefore, the Department's determination of divestment for the monies paid to [REDACTED] for "travel reimbursement" in the amount of \$ [REDACTED] was proper and correct.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that the Department was correct in determining divestment in the amount of \$ [REDACTED] and that decision is **UPHELD**. The Department was incorrect in determining divestment in the amount of \$ [REDACTED] related to the [REDACTED] bond portfolio account and that decision is **REVERSED**. The Department shall redetermine the divestment penalty period consistent with this decision. Claimant shall be eligible for Medicaid upon completion of the new divestment penalty period if otherwise eligible.



Aaron McClintic
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 01/09/2013

Date Mailed: 01/09/2013

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 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

AM/kl

cc:

