

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

IN THE MATTER OF:



Reg. No.: 2013-20589
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: January 20, 2012
County: Allegan

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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 conducted from Detroit, Michigan on Wednesday, January 30, 2013. The Claimant did not appear; however her Authorized Hearing Representative [REDACTED] appeared on her behalf. Participating on behalf of Department of Human Services ("Department") was [REDACTED].

ISSUE

Whether the Department properly imposed a divestment penalty for the period from September 1, 2012 through October 23, 2012 based on the transfer of an asset for less than fair market value?

FINDINGS OF FACT

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

1. The Claimant resides in a long-term care facility.
2. The Claimant received a widow's benefit in the amount of [REDACTED] from the Social Security Administration ("SSA").
3. The Claimant's guardian submitted receipts to establish how the money from the SSA was disposed of.
4. Gift transfers totaled \$12,212.75.
5. As a result the Department imposed a divestment penalty for the period from September 1st through October 23, 2012.

6. On August 3, 2012, the Department notified the Claimant of the determination but did not notify the Claimant's guardian. (Exhibit 1)
7. On December 18, 2012, the Department received a written request for hearing from the Claimant's guardian. (Exhibit 2)

CONCLUSIONS OF LAW

As a preliminary matter, the Department sent the Notice of Case Action to the Claimant but did not send the Notice to the Authorized Representative (guardian) as required in policy. As such, the Department did not dispute that the December 18th request for hearing was timely.

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

Divestment results in a penalty period in MA, not ineligibility. BEM 405 (July 2012), p. 1. Divestment means a transfer of a resource by a client (or spouse) that is within the look-back period and is transferred for less than fair market value ("FMV"). BEM 405, p. 1. Less than FMV means the compensation received in return for a resource was worth less than the FMV of the resource. BEM 405, p. 5. Transferring a resource means giving up all or partial ownership in, or rights to, a resource. BEM 405, p. 2. The giving away of an asset results in divestment. BEM 405, p. 2. During the penalty period, MA will not pay for long-term care services. BEM 405, p. 1.

In this case, the Claimant received a widow's benefit from the SSA in the amount of \$20,256.00. From this amount, \$12,212.75 was given away as gifts to help family members. The gifts were given during the look back period for less than fair market value. In light of the foregoing, the Department established it acted in accordance with Department policy when it imposed the Divestment penalty as a result of the transfer of an asset for less than FMV. Accordingly, the Department's determination is AFFIRMED.

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 established it acted in accordance with Department policy when it imposed the Divestment penalty due to a transfer of an asset during the look-back period for less than fair market value.

Accordingly, it is ORDERED:

The Department's imposition of the Divestment penalty is AFFIRMED.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 5, 2013

Date Mailed: February 5, 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 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

CMM/tm

cc:

