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

#### IN THE MATTER OF:



Reg. No.: 2013-20698

Issue No.: 2010

Case No.: Hearing Date:

June 12, 2013

County: St. Clair

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

# **HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's reques t for hear ing. After due notice, a telephon e hearing was conducted from Lansing, Michigan on Wednes day, June 12, 2013. Claimant's son-in-law, appeared and testified. Eligibility Specialist appeared on behalf of the Department.

### **ISSUE**

Whether the Department proper ly imposed the Divestment penal ty for the months of January, 2013, through March 21, 2013?

## FINDINGS OF FACT

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

- Claimant is a MA recipient and resides in a long-term care facility.
- 2. On December 19, 2011, the departm ent received an MA applic ation from Claimant's son-in-law.
- Claimant was approved for Medicaid effective December 1, 2011.
- 4. During the look-back per iod, payments were made to relatives and non-relatives for various services and reimbursements.
- 5. At the Redetermination in Nov ember, 2012, the depart ment considered these transfers a divestment resulting in the imposition of a dive stment penalty period of 1/1/13 through 3/21/13, based on a divestment of \$\frac{1}{2} \frac{1}{2} \frac{1

- 6. On December 12, 2012, the Department sent an Eligibility Notice t o the Claimant/Representative which included notification of the divestment penalty.
- 7. On December 20, 2012, the Department received the Claiman t/Representative's timely written request for hearing.

## **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An oppor tunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1). An opportunity for a hearing shall be granted to an applicant who requests a hearing because of a denial. MAC R 400.903(2).

Clients have the right to c ontest a department decis ion affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity 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 Reference Tables Manual (RFT).

The goal of the Medicaid program is to ensure that essentia I health care s ervices are made available to those who otherwise could not afford them. BEM 105. Medicaid is also known as Medical Assistance ("MA"). *Id.* The Medicaid program is comprised of several categories; one category is for FIP r ecipients while another is for Supplementa I Security Income ("SSI") recipients. *Id.* Programs for individuals not receiv ing FIP or SSI are based on eligibility factors in either the FIP or SSI program thus are categorized as either FIP-related or SSI-related. *Id.* To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entit led to Medicare or formally blind or disabled. *Id.* FIP- and SSI-related Group 2 eligibility is possible even when net income exceeds the income limit because in curred medical expenses are considered. *Id.* Eligibility is determined on a calendar month basis. BEM 105. MA income eligibility exists for the calendar month tested when there is no excess income or allowab le medical expenses that equal or exceed the excess income. BEM 545.

Divestment results in a penalty period in MA, not in eligibility. B EM 405. D uring the penalty period, MA will not pay for long-term care services. *Id.* Divestment means a transfer of a resource by a client (or spouse) that is w ithin the look-back period and is transferred for less than fair market value ("FMV"). *Id.* Transferring a resource means

giving up all or partial ownership in, or rights to, a resource. *Id.* Resource means all the client's (and spouse's) assets and income. *Id.*; 20 CFR 416.1201. Less than FMV means the compensation received in return for a resource was worth less than the FMV of the resource. BEM 405. When a person gives up the right to receive income, the FMV is the total amount of income the person could have expected to receive. *Id.* 

The first step in det ermining the period of time that transfers can be looked at for divestment is to determine the baseline date. BEM 405. The baseline date (applicable in this case) is the date which the client was an MA applicant and in a long-term care facility. *Id.* After the baseline date is established, the look-back period is established. BEM 405. The look-back period is 60 months for all transfers made after February 8, 2006 and 36 or 60 months (depending on the type of resource transferred) for transfers made on or before February 8, 2006. *Id.* Transfers made by anyone acting in place of, on behalf of, at the request of, or at the direction of the client/spouse during the look-back period are considered. *Id.* 

In this cas e, payments were m ade to bot h relatives and non- relatives f or various services and reimbursements. The parties did not disp ute the bas eline date of 12/19/11, or the look-back period.

	Date	Amount of	
Payee	of Transfer	Transfer	Purpose
Claimant	11/21/11	\$	Unknown
Claimant	12/14/10	\$	Unknown
Claimant	11/24/08	\$	Unknown
Relative	12/6/11	\$	Hearing Aids (3/12/12)
Relative	11/14/11	\$	Unknown
Relative	1/23/12	\$	Moving expenses paid to family
Relative	2008-2012	\$	Personal care paid to family
		\$	_

The above transfers were to Claimant and rellatives. The below listed expenses were submitted by Claimant's representative and verified by the department.

Payee	Date of Transfer	Amount of Transfer	Purpose
Non-relative	11/30/11	\$	Long term care facility
Non-relative	12/27/11	\$	Long term care facility
Non-relative	12/27/11	\$	Hairdresser at LTC
Non-relative	12/20/11	\$	Miscellaneous bills
Non-relative	11/21/11	\$	Renter's insurance
Non-relative	11/14/12	\$	Prescription expenses
Non-relative 11/20/12		\$	Rent
\$			

The above transfers for Claimant's healthcare, pharmacy, insurance, rent, and hair were for the sole benefit of Claimant and thus are not divestments. In reviewing the various asset transfers, the depar timent found \$ as di vestment (\$ - \$ = \$ - \$ |

Transfers for less than fair market value ar e presumed to be for eligibility purposes unless/until the client provides c onvincing evidence that they had no reason to believe long-term care (or waiver services) might be needed. *Id.* Converting an asset from one form to another of equal value is not dives tment even if the ne w asset is exempt. *Id.* Payment of expenses such as one's own taxes or utility bills is not divestment. *Id.* 

The Claim ant/Representative asserts that the above transfers totaling \$18.960.80 should be considered Asset Conversions. A sset Conversion applies when an asset is converted from one asset to another of equal value. Examples provided for in policy are:

- Using \$5,000 from savings to buy a used car priced at \$5,000
- Trading a boat worth about \$8,000 for a car worth about \$8,000

Claimant's representative contends that the \$ transfer on 12/6/11 was used to buy hearing aids for Claimant. The heari ng aids were pur chased on 3/12/12 for Here, the transfer was for less than fair market value. Transfers for less than fair market value are presumed to be fo religibility purposes, unless the client provides convincing evidence that they had no reason to believe long-term care (or waiver services) might be needed. BEM 405. Claimant enter ed long-term care on 10/21/11. Therefore, Claimant was already in long-term care at the time of the transfer. As a result, the \$ transfer is a divestment.

On 1/23/12, \$1,282.94 was transferred to family for moving expenses. Relatives can be paid for providing services, however, if payment was not made at the time services were rendered, it is presumed the care was done for free. BEM 405. A client may rebut this presumption by providing tangible evidence that a payment obligation existed at the time the service was provided such as a signed written agreement. *Id.*; 20 CF R 416.1246(e) Such agreements, according to BEM 405, are considered to be a transfer for less than fair market value unless the compensation is in accordance with all of the following:

- The services must be performed **after** a written legal contract/agreement has been executed between the clie nt and provider. The services are not paid for until the services have been provided. The contract/agreement must be dated and the signatures must be notarized.
- At the time of the rec eipt of the servic es, the client is not resid ing in a nursing facility, adult foster care hom e, institution for mental di seases, inpatient hospital, intermediate care fa cility for mentally r etarded or eligib le f or home and community based waiver, home health or home help; **and**

- At the time the s ervices ar e re ceived, the services must have been recommended in writ ing and signed by the client's physicia n as necessary to prevent the transfer of the c lient to a residential car e or nursing facility. Such services cannot include the provision of companionship; and
- DHS will verify the cont ract/agreement by reviewin g the writt en instrument between the client and the provider which must show the type, frequency and duration of such ser vices being prov ided to the client and the amount of consideration (money or property) being received by the provider, or in accordance with a shervice plan approved by DHS. If the amount paid for services is above fair market value, then the client will be considered to have transferred the asset for less than fair market value. If in question, fair market value of the services may be determined by consultation with an area business which provides such services; and
- The contract/agreement must be signed by the client or leg ally authorized representative, such as an agent under a power of attorney, guardian, or conservator. If the agreement is signed by a representative, that representative cannot be the provider or beneficiary of the contract/agreement.

Claimant's son-in-law and his two son's submitted typed receipts for their time spent packing and moving Claimant's belongings in the amount of with another receipt for for the U-haul rental and fuel. A contract dated 12/10/11 was also submitted, signed by Claimant, indicating she agreed to pay her daughter, son-in-law and sons to pack up and move her belongings.

However, while the contract signed by Cla imant was prior to the services being completed, it was not notarized. In addition, Claimant was already residing in long-term care at the time the services were provided and the services were not recommended in writing by a physician. Therefore, the transfer for services were not in accord with policy provision BEM 405.

This same reasoning applies to the \$ transfer for personal c are paid to Claimant's daughter. Here Claimant's daughter submitted a type written contract dated 1/3/09 notarized and signed by Claimant, requesting Claimant's daughter assist in her medical care at home, limited to bathing and foot care, for at least 10 hours a week at an hour. But this contract is not valid because the doctor's authorization was written after the services were performed and the contract did not state Claimant needed her daughter's services to keep her out of a nursing facility.

Claimant's daughter also submitted a second type writt en contract dated 11/11/12 that as an RN, she had assisted her mother with her personal car e for the past 4 years, approximately 10 hours a month at an average rate of an hour for approximately a year, totaling In addition, she he liped with the moving and packing of Claimant's apartment for Claimant's daughter signed the contract and it was notarized. However, the contract was not signed by Claimant, a doctor did

not recommend the services be performed in writing and the contract date was after the services were performed.

Relatives who provide assistance or servic es are presumed to do so for love and affection, and compensation for past assistance or servic es shall create a rebuttable presumption of a transfer for less than fair market value. The presumption has not been rebutted and as a result, the \$ for personal care and \$ for moving expenses are divestments because they are not in accord with policy BEM 405.

With the exception of transfers for the Claimant's healthcare, pharmacy, insurance, rent, and hair totaling \$ it is not known what the remaining payments were for or whether the transfers were for the sole benefit of the Claimant. In light of the foregoing, it is found that the "unknown" transfers (\$ and \$ are divestments, as well as the \$ (the remainder of the \$ are while the \$ are in reimbursements for Claimant's transfers were for the Claimant's healthcare, pharmacy, insurance, rent, and hair are not.

The "unknown" reimbursements in the amount of \$ \$ and \$ are divestments because it was not established that the transfers were indeed for the benefit of the Claimant. Additionally, car egiver costs are divestments in that there was no tangible evidence to establish that a payment obligation existed at the time the services (caregiver costs) was rendered. Once again, for the same reasons discussed above, Asset Conversion is not applicable.

Claimant/Representative contends that the funeral contract dated 11/7/11 for \$9,694.40 is a transfer to a funeral plan and not divest ment. In accord with policy, plac ing money in an irrevocable prepaid funeral contract is not divestment. BEM 405.

Here, Claimant's annuity was cashed out on 11/21/11, for \$ In addition, two withdrawals from Claimant's checking acc ount were on 11/14/11 for \$ and on 12/6/11 for \$ Therefor e, despite the funeral c ontract being c ertified by department as irrevocable, it was not cons idered an allo wable expense because the funeral contract was purc hased on 11/7/11, which was before the annuity was cashed out and the monies withdrawn from Claim ant's checking a ccount. As a result, the \$ was money Claimant al ready had on hand and was not from the divested amount considered by the department.

Claimant/Representative also contends that an orthodontist bill for \$ is a medical expense and not divestment. However, the date of service for the bill is 2/18/08, which was prior to the annuity disbursement s of 11/24/08, 12/14/10 and 11/21/11 and therefore, cannot properly be considered and allowable expense.

Ultimately, as detailed abov e, because there was no wr itten agreement or other convincing tangible evidence to establish that a payment obligation existed at the time the *services* were rendered between the Claimant and relatives, the \$ in transfers are divestments.

## CONCLUSION

In this c ase, transfers were made to relatives and non-rela tives for various reimbursements and services. As set forth above, some of the transfers are divestments while others are not. Ultimately, t he Department established it acted in accordance with Department policy when it determined a divestment existed.

## **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusion sof law, AFFIRMS the Department's determination. Accordingly, it is ORDERED:

- 1. The Depar tment's determination that a divestment occurred is **AFFIRMED**.
- 2. The Department's divestment calculation and resulting divestment penalty period is **AFFIRMED**.
- 3. The Department shall im pose the proper divestment penalty due to divestment transfers totaling
- 4. The Department shall notify the parties in writing of the divestment penalty.
- 5. The Department shall supplement for any lost benefits that Claim ant was entitled to receive if otherwise eligible and qualified to receive in accordance wit h Department policy.

Vicki L. Armstrong Administrative Law Judge for Maura D. Corrigan, Director Department of Human Services

Date Signed: July 3, 2013

Date Mailed: July 5, 2013

**NOTICE**: Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing <u>MAY</u> 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

Recons ideration/Rehearing Request P.O. Box 30639 Lansing, Michigan 48909-07322

#### VLA/las

cc: