

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-26643
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: May 22, 2013
County: Allegan

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 the Claimant's request for a hearing. After due notice, a 3-way telephone hearing was held from Lansing, Michigan, on Wednesday, May 22, 2013. Claimant did not appear however; his Authorized Hearing Representative Attorney [REDACTED] [REDACTED] appeared on his behalf. Claimant's niece, [REDACTED] [REDACTED] and the Business Office Manager, [REDACTED] [REDACTED] appeared but did not testify. Assistant Attorney General [REDACTED] [REDACTED] Assistance Payment Supervisor [REDACTED] [REDACTED] and Long Term Care Specialist [REDACTED] [REDACTED] appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly determined divestment occurred warranting the imposition of the divestment penalty?

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 applied for Medicaid on October 26, 2012. Claimant did not list the property on his application. The departmental Long Term Care Specialist testified that a parcel search showed Claimant quit claimed a parcel of property for \$ [REDACTED] in May, 2011.
2. On October 31, 2012, the department mailed Claimant a verification checklist requesting verification that the property was sold for fair market value. (Dept. Ex. 88).

3. On November 26, 2012, the Business Office Manager from the Long Term Care Facility where Claimant resides contacted the department Long Term Care Specialist informing her that both lawyers had attempted to have two realtors get the fair market value of the property and both realtors told the attorneys the same thing, it has to be done through an appraisal. The Long Term Care Specialist informed the Business Office Manager that an appraisal would suffice, and extended the due date of the verification an additional 10 days to Thursday, December 6, 2012. (Dept Ex. 24).
4. On December 13, 2012, the department issued a Notice of Case Action informing Claimant that his long term Medicaid application had been processed and approved. However, Claimant was required to serve an 11 month, 12 day penalty period due to Divestment of \$ [REDACTED]. The divestment period began 11/1/11. (Dept Ex. 95-96).
5. On January 17, 2013, the Department received the Claimant's timely written request for hearing.

CONCLUSIONS OF LAW

The Medical Assistance 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. Department policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Manual ("RFT").

Divestment results in a penalty period in MA, not ineligibility. BEM 405. 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. 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. BEM 405. Transferring a resource means giving up all or partial ownership in, or rights to, a resource. BEM 405. During the penalty period, MA will not pay for long-term care services. BEM 405.

In this case, in May, 2011, the Claimant executed a Quit Claim Deed for a parcel of property for \$ [REDACTED]. However, the SEV as of September, 2008, was \$ [REDACTED].

To determine ownership and/or value of Real Property, the department requires:

- Deed, mortgage, purchase agreement or contract.
- State Equalized Value (SEV) on current property tax records multiplied by two.
- Attorney or court records.

- County records.
- Statement of real estate agent or financial institution. (BEM 400, p 45).

In this case, the department requested the statement of a real estate agent in determining the value of the property. The department gave Claimant a 10 day extension when Claimant was informed a real estate agent could not give the fair market value of a property and an appraisal was required. The appraisal was due December 6, 2012.

While the department used the SEV to calculate the divestment penalty in accord with BEM 400, it calculated the penalty to be \$ [REDACTED]. However, the documentation submitted by the department on page 19, shows the SEV to be \$ [REDACTED]. Therefore, this Administrative Law Judge used \$ [REDACTED] as the divestment penalty.

Claimant's attorney argues that the May, 2013, appraisal should be used regardless of when it was received because it is more accurate and equitable. Moreover, Claimant's attorney asserts Claimant was not competent at the time he quit claimed the property, but submits no offer of proof to support the assertion and therefore it is not addressed.

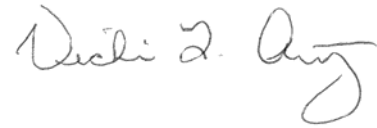
Claimant's grievance centers on dissatisfaction with the department's current policy. Claimant's request that the department use the appraisal from May, 2013, of \$ [REDACTED] completed by the Township Assessor, to support a lower divestment penalty and shorter divestment period, is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the department policy set out in the program manuals. Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940). As such, the department used the best information available to it at the time the Notice of Case Action was issued and properly determined that divestment had occurred requiring the imposition of a penalty period. Accordingly, the Department's determination is AFFIRMED.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds that the Department properly determined that a \$ [REDACTED] divestment occurred requiring the imposition of a penalty period.

The Department's determination that divestment occurred resulting in imposition of the penalty period is **AFFIRMED** and the Department shall recalculate the divestment period using the \$ [REDACTED] penalty and issue a new Notice of Case Action if the penalty period changes.

It is SO ORDERED.



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

Date Signed: June 10, 2013

Date Mailed: June 11, 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

2013-26643/VLA

VLA/las

cc:

