

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-577
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: January 31, 2013
County: Marquette County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 held on Thursday, January 31, 2013, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant's attorney, [REDACTED], from [REDACTED] with a P# of 23098. Participants on behalf of Department of Human Services (Department) included [REDACTED] DA and [REDACTED] ES.

ISSUE

Due to excess income, did the Department properly deny Claimant's application close Claimant's case reduce Claimant's benefits for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP)? | <input type="checkbox"/> Adult Medical Assistance (AMP)? |
| <input type="checkbox"/> Food Assistance Program (FAP)? | <input type="checkbox"/> State Disability Assistance (SDA)? |
| <input checked="" type="checkbox"/> Medical Assistance (MA)? | <input type="checkbox"/> Child Development and Care (CDC)? |

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 benefits for: received benefits for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP). | <input type="checkbox"/> Adult Medical Assistance (AMP). |
| <input type="checkbox"/> Food Assistance Program (FAP). | <input type="checkbox"/> State Disability Assistance (SDA). |
| <input checked="" type="checkbox"/> Medical Assistance (MA). | <input type="checkbox"/> Child Development and Care (CDC). |

2. On August 16, 2012, the Department denied Claimant's application closed Claimant's case reduced Claimant's benefits due to excess income.
3. On August 16, 2012, the Department sent Claimant Claimant's Authorized Representative (AR) notice of the denial. closure. reduction.
4. On September 17, 2012, Claimant or Claimant's AHR filed a hearing request, protesting the denial of the application. closure of the case. reduction of benefits.

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 Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1999 AC, R 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, R 400.3001 through Rule 400.3015.

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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AAC, R 400.3151 through Rule 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of

1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and 1999 AC, R 400.5001 through Rule 400.5015.

BEM 405-Divestment

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

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 HARSHIP in this item.

RESOURCE DEFINED

Resource means all the client's and his spouse's assets and income. It includes all assets and all income, even countable and/or excluded assets, the individual or spouse receive. It also includes all assets and income that the individual (or their spouse) were entitled to but did **not** receive because of action by one of the following:

The client or spouse.

A person (including a court or administrative body) with legal authority to act in place of or on behalf of the client or the client's spouse.

Any person (including a court or administrative body) acting at the direction or upon the request of the client or his spouse.

TRANSFER OF A RESOURCE

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. Not all transfers are divestment. Examples of transfers include:

Selling an asset for fair market value (not divestment).

Giving an asset away (divestment).

Refusing an inheritance (divestment).

Payments from a **MEDICAID TRUST** that are **not** to, or for the benefit of, the person or his spouse; see BEM 401 (divestment).

Putting assets or income in a trust; see BEM 401.

Giving up the **right** to receive income such as having pension payments made to someone else (divestment).

Giving away a lump sum or accumulated benefit (divestment).

Buying an annuity that is **not** actuarially sound (divestment).

Giving away a vehicle (divestment).

Putting assets or income into a Limited Liability Company (LLC)

Also see Joint Owners and Transfers for examples.

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LOOK-BACK PERIOD

The first step in determining the period of time that transfers can be looked at for divestment is determining the baseline date; see Baseline Date in this item.

Once the baseline date is established, you determine the look-back period. The look back period is 60 months prior to the baseline date for all transfers made after February 8, 2006.

Entire Period

Transfers that occur **on** or **after** a client's baseline date must be considered for divestment. In addition, transfers that occurred within the 60 month look-back period must be considered for divestment.

Penalty Situation

A divestment determination is **not** required unless, sometime during the month being tested, the client was in a penalty situation. To be in a penalty situation, the client must be eligible for MA (other than QDWI) and be one of the following:

In an LTC facility.
APPROVED FOR THE WAIVER; see BEM 106.
Eligible for Home Help.
Eligible for Home Health.

Baseline Date

A person's baseline date is the **first** date that the client was eligible for Medicaid and one of the following:

In LTC.
APPROVED FOR THE WAIVER; see BEM 106.
Eligible for Home Health services.
Eligible for Home Help services

A client's baseline date does **not** change even if one of the following happens:

The client leaves LTC.

The client is no longer APPROVED FOR THE WAIVER; see BEM 106.

The client no longer needs Home Help.

The client no longer needs Home Health.

LESS THAN FAIR MARKET VALUE

Less than fair market value means the compensation received in return for a resource was worth less than the fair market value of the resource. That is, the amount received for the resource was less than what would have been received if the resource was offered in the open market and in an arm's length transaction (see glossary).

Also see Annuity Not Actuarially Sound above.

Compensation must have tangible form and intrinsic value.

Relatives can be paid for providing services; however, assume services were provided for free when no payment was made at the time services were provided. A client can rebut this presumption by providing tangible evidence that a payment obligation existed at the time the service was provided (for example a written agreement signed at the time services were first provided). The policy in BAM 130 allowing use of best available information or best judgment as verification does not apply.

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TRANSFERS THAT ARE NOT DIVESTMENT

Transferring Excluded Income

Transferring income that is **not** countable income for SSI-related MA according to BEM 500 is **not** divestment.

Transfers Involving Spouse

It is **not** divestment to transfer resources from the client to:

The client's spouse.

Another SOLELY FOR THE BENEFIT OF the client's spouse.

Transfers from the client's spouse to another SOLELY FOR THE BENEFIT OF the client's spouse are **not** divestment.

Transfers Involving Child

Transfers to the client's blind or disabled (see BEM 260) child, regardless of the child's age or marital status, are **not** divestment. This includes transfers to a trust established SOLELY FOR THE BENEFIT OF the child.

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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.

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 is the 1st day after the penalty period ends. The baseline for the calendar year of 2012 is \$7032 for LTC.

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 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.

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.

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Additionally, Claimant applied for MA benefits on January 31, 2012. Claimant was in the nursing home from September 16, 2011. On January 23, 2012, The claimant transferred \$ [REDACTED] to his brother-in-law trust named for the Jeffery J. Young Sole Benefit Trust. Department Exhibits A1 -A18 and E1. On August 16, 2012, the Department caseworker sent Claimant a notice that he was not eligible for MA for long-term care from January 1, 2012 through March 13, 2016 as a result of assets or income being transferred for less than fair market value from January 1, 2012 through March 13, 2016. Department Exhibits D1-D5.

Resources Returned

Cancel a divestment penalty if either of the following occur before the penalty is in effect:

All the transferred resources are returned and retained by the individual.

Fair market value is paid for the resources.

Recalculate the penalty period if either of the following occurs while the penalty is in effect:

All the transferred resources are returned.

Full compensation is paid for the resources.

Use the same per diem rate originally used to calculate the penalty period.

Once a divestment penalty is in effect, return of, or payment for, resources cannot eliminate any portion of the penalty period already past. However, recalculate the penalty period.

The divestment penalty ends on the later of the following:

The end date of the new penalty period.

The date the client notified you that the resources were returned or paid for.

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The baseline for 2012 was \$ [REDACTED] divided by 30 for a day rate of \$ [REDACTED]. The Claimant transferred \$ [REDACTED] from account 817-[REDACTED], \$ [REDACTED] from account 183-[REDACTED] and \$ [REDACTED] from account [REDACTED] for a total of transferred funds of \$ [REDACTED]. The resulting penalty of \$ [REDACTED] x \$ [REDACTED] equal [REDACTED] days of penalty that Claimant is not eligible for MA benefits for the contested time period of January 1, 2012 through March 13, 2016.

Although the claimant's attorney's argument was persuasive, he repeatedly failed to read the important words in the policy of "the claimant's spouse" or "the claimant's blind or disabled child". The claimant's brother-in-law is not his child. Therefore, any monies transferred to the claimant's brother-in-law are divestment. As a result, the department has met its burden that due to divestment that the claimant is not eligible for MA from January 1, 2012 through March 13, 2016. However, if the resources are returned or the

full compensation of the resources is returned, then the divestment penalty period can be recalculated.

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, due to excess income, the Department properly improperly

- denied Claimant's application
- reduced Claimant's benefits
- closed Claimant's case

for: AMP FIP FAP MA SDA CDC.

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.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: March 5, 2013

Date Mailed: March 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

CGF/hj

cc:

