

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

IN THE MATTER OF:

██████████
██████████████████
██████████████████

Reg. No.: 201332320
Issue No.: 2010
Case No.: ██████████
Hearing Date: June 26, 2013
County: Wexford-00

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 following Claimant's request for a hearing. After due notice, an in person hearing was held on June 27, 2013, from Cadillac, Michigan. Participants on behalf of Claimant included, Claimant's son, ██████████. Participants on behalf of the Department of Human Services (Department) included, Shelia Crittendon, and, Stephanie Mills.

ISSUE

Did the Department properly determine that divestment occurred and impose a 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 entered a nursing home facility on January 23, 2012.
2. On March 12, 2012, the Department determined that divestment occurred in the amount of ██████████ when on January 7, 2012, the Claimant purchased a 42% interest in her son's home for ██████████
3. A divestment penalty period from January 1, 2012, through September 5, 2012, was imposed.

4. Claimant requested hearing on March 30, 2012, contesting the determination of divestment and imposition of divestment penalty period.
5. The state assessed value of the property located at [REDACTED], [REDACTED] was [REDACTED] in February 2012.
6. No inquiry by the Department was made to Bill Maurer to determine if he was willing to sell the property and split the shares pursuant to the parties' ownership interests.

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 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 Mich Admin Code, R 400.3101 through R 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 Mich Admin Code, R 400.3001 through R 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 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.

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 State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 ACS, R 400.3151 through R 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 Mich Admin Code, R 400.5001 through R 400.5015.

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). BEM 405

Asset Conversion

Converting an asset from one form to another of equal value is **not** divestment even if the new asset is exempt. Most purchases are conversions.

- **Example:** Using \$5,000 from savings to buy a used car priced at \$5,000 is conversion for equal value.
- **Example:** Trading a boat worth about \$8,000 for a car worth about \$8,000 is conversion for equal value.

Payment of expenses such as one's own taxes or utility bills is also **not** divestment. BEM 405

Real Property And Mobile Home Value Fip, Sda, Rca, Ssi-Related Ma And Fap

To determine the fair market value of real property and mobile homes use:

- Deed, mortgage, purchase agreement or contract.
- State Equalized Value (SEV) on current property tax records multiplied by two. BEM 400

Additionally, Claimant's Attorney argued that Claimant paid fair market value for her interest in the property. $42\% \text{ of } \$129,000 = \$54,180$. This Administrative Law Judge finds that Claimant's purchase of a 42% interest in her son's home was not divestment because she paid fair market value pursuant to the valuation guidelines outlined in Department policy. BEM 400 It was reasonable and prudent for the Claimant to rely upon the real estate valuation prescribed by Department policy. Therefore the Department's determination of divestment and imposition of divestment penalty was improper and incorrect.

Claimant's Attorney further argued that purchasing the fractional share of real estate should have been deemed an asset conversion and therefore not divestment pursuant to BEM 405. Since the value of what Claimant received was equal to the money paid for the property, again pursuant to the manner in which the Department dictates real estate is valued, this argument is also persuasive. BEM 405

The Department argued that the transaction was not made at arm's length because it was made between relatives and cited the Mackey v. Department of Human Services decision 289 Mich. App. 688; 808 N.W. 2d 484.. The Department also argued that Claimant did not pay fair market value for the ownership interest that she received. The Department speculated that the value of what Claimant received was less than what she paid but offered no alternative valuation of her ownership interest and cited no Department policy that dictated valuing real estate different than the manner outlined in BEM 400.

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 when they denied Claimant's application for Medicaid due to excess assets.

did not act properly when determined that divestment occurred and imposed a divestment penalty period.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED **REVERSED** for the reasons set forth in this decision.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Lift the divestment penalty going back to January 1, 2012.
2. Reinstate and reprocess MA benefits, and activate MA coverage, beginning in January 2012, if Claimant is otherwise eligible.



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

Date Signed: 07/12/2013

Date Mailed: 07/15/2013

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 affect the substantial rights of the claimant,
 - 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/pw

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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