

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

**IN THE MATTER OF:**

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

Reg. No.: 2013-35937  
Issue No.: 2010  
Case No.: ██████████  
Hearing Date: July 11, 2013  
County: Oakland (03)

**ADMINISTRATIVE LAW JUDGE:** Jan Leventer

**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 July 11, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant's Authorized Representative, ██████████, ██████████, Claimant's daughter, and ██████████, Claimant's son-in-law. The Claimant did not appear. Participants on behalf of the Department of Human Services (Department) included ██████████, Long-Term Care Case Worker and ██████████, Assistance Payments Worker Supervisor.

**ISSUE**

Did the Department properly  deny the 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 December 1, 2012, the Department  denied Claimant's application  closed Claimant's case  approved Claimant's benefits, with a determination that Claimant made a divestment transfer which disqualified her for 22.5 mos.
3. On December 18, 2012, the Department sent  Claimant  Claimant's Authorized Representative (AR) notice of the  denial.  closure.  approval with a penalty reduction.
4. On March 14, 2013, Claimant or Claimant's AHR filed a hearing request, protesting the  denial of the application.  closure of the case.  approval with a penalty reduction.

### **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 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.

Additionally, the applicable Department policy in this case is Bridges Eligibility Manual (BEM) 405, "MA Divestment." Divestment is a particular transfer of a resource. The term is defined in detail in BEM 405. Department of Human Services Bridges Eligibility Manual (BEM) 405 (2013).

BEM 405 states that a divestment is a transfer that has all three of the following features: it is within a specified time, it is a transfer for less than fair market value, and, it is not specifically listed as one of ten transfers that are not divestments. *Id.*, p. 1. Each of these requirements will be examined individually in order to determine if a divestment occurred in this case.

First, the transfer must be within a specified time, designated the "look-back period." BEM 405 defines the look-back period as the period beginning at the client's baseline date, going back sixty months, and continuing forward after the baseline date. The baseline date is the first date the client becomes eligible for Medicaid. *Id.*, pp. 4-5.

The Claimant in this case became eligible for MA on December 1, 2012, making this date the Claimant's baseline date. The transfer in this case occurred four months before this date, on August 29, 2012. Dept. Exh. 1, p. 8.

Clearly then, the Claimant's transfer occurred during the look-period, which began on Claimant's date of eligibility. Having considered this evidence and all of the evidence in

this case as a whole, it is found that the Department has met the first requirement for proving a divestment BEM 405, p. 4.

Looking next at the second requirement for a finding of divestment, this is the requirement that the transfer be for less than fair market value. *Id.*, p. 1.

Less than fair market value is defined in BEM 405 as a transfer where the compensation for the resource is less than the fair market value of the resource. BEM 405 states that while relatives can be paid for providing services, it is assumed that the services were provided for free when no payment was made at the time services were provided. In this case the services were provided in 2011, and payment was made on August 29, 2012. *Id.*, p. 5.

Clearly, the services were not paid for at the time they were provided, but the assumption that this transfer was for less than fair market value can be rebutted, by a showing that a payment obligation existed at the time the service was provided. The payment obligation could be a written agreement which was signed at the time the services were first provided. *Id.*

In this case there is a written agreement, but it was not executed until December 3, 2011. Dept. Exh. 1, pp. 14-20. The spreadsheet indicates that 224 hours were expended in December, 2011, and 504 hours were performed during the earlier portion of 2011. Dept. Exh. 2.

Having considered all of the evidence in this case in its entirety, first it is found and determined that the 504 hours work performed before December 3, 2011, were performed for less than fair market value as there was no payment obligation at the time the services were provided. BEM 405, p. 5.

With regard to the 224 hours of work in December, 2011, this transfer must be considered in light of the Durable Power of Attorney agreement executed December 3, 2011. Here again the BEM 405 presumption is in operation, and the services are assumed to be provided for free because no payment was made at the time that the services were provided. *Id.*

The presumption can be rebutted by the client if they can show that a payment obligation existed at the time the services were provided, such as a written agreement from the time the services were first provided. However in this case there was no written agreement at the time the services were first provided earlier in 2011. The written agreement in this case was executed months after the first services were provided, as shown by the spreadsheet data. Dept. Exh. 2.

Therefore, having considered all of the evidence in this case as a whole, it is found and determined that the Department has established that there has been a transfer of resources for less than fair market value, as payment was not made at the time services were provided, and there was no written payment obligation when the services were

first provided. The second requirement for a finding of divestment is proved. BEM 405, p. 5.

Next, the third and final requirement for a finding of divestment is that the transfer not be listed on the Department's list of ten transfers that are not divestments. These ten exceptions are: transferring excluded income, transfers involving spouse, transfers involving child (blind/disabled), transfer to funeral plan, transfer to trust, purchase of funeral contract, asset conversion, transferring homestead to family, transfers for another purpose, and trustee fees. *Id.*, pp. 7-9.

The factfinder has carefully reviewed all ten exceptions and finds that the transfer in the case at bar does not fall within any of these exceptions. Claimant argued at the hearing that the last exception, trustee fees, might apply, but agreed that the factfinder would have to have power in equity in order to find that a trust existed in this case. The Administrative Law Judge has no such power.

Accordingly, having considered all of the evidence in this case in its entirety, it is found and determined that the Department has established the third requirement needed for a conclusion that a divestment has occurred. This concludes the review of the three factors the Department must establish in order to conclude that a transfer is a divestment which is subject to penalty. It is found and determined that all three requirements have been fulfilled, and the Department shall be affirmed.

In conclusion, 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 the Department  properly  improperly


- denied Claimant's application
- approved Claimant's benefits with a divestment penalty
- 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.



**Jan Leventer**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: July 23, 2013

Date Mailed: July 24, 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

JL/tm

cc: [REDACTED]  
[REDACTED]  
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