

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

IN THE MATTER OF:

██████████
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██████████
██████████

Reg. No.: 201331628; 201338707
Issue No.: 2010
Case No.: ██████████
Hearing Date: June 25, 2013
County: Grand Traverse-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 25, 2013, from Traverse City, Michigan. Participants on behalf of Claimant included Claimant's Power of Attorney ██████████, and, ██████████ ██████████ Claimant's Attorney, ██████████ ██████████, also appeared for the Claimant. Participants on behalf of the Department of Human Services (Department) included, Tom Jessmore, and, Rachel Cabinaw. Assistant Attorney General, Geraldine Brown, represented the Department and participated by telephone.

ISSUE

Did the Department properly determine Claimant's MA divestment penalty period?

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 had an ongoing case with DHS for several years, and was active for Medicaid.
2. On August 1, 2012, Claimant's MA case closed for failing to return verification forms.
3. Claimant applied for MA on October 2, 2012.
4. The Department discovered that previous applications failed to account for the sale of real estate in September 2010, which was divestment. Claimant properly reported this sale at the time of the previous application.

5. On January 9, 2013, the Department issued a Notice of Case Action imposing a divestment penalty period from October 1, 2012, through January 5, 2013.
6. On March 13, 2013, a Notice of Case Action was issued by the Department approving MA effective October 1, 2012, determining divestment occurred in the amount of [REDACTED] in September 2010, and imposed a divestment penalty period from October 1, 2012, through February 19, 2013.
7. Both parties agreed that the correct divestment amount was [REDACTED]
8. Claimant requested hearing on February 21, 2013, and March 27, 2013, contesting the divestment determination and imposition of divestment penalty.
9. Claimant had two hearing requests that dealt with essentially the same issue so the files were consolidated with the consent of the Claimant and the Department.
10. Claimant asserted at hearing that the penalty period should have begun on December 20, 2011, when the Claimant first became eligible for Medicaid.

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 AACR, 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.

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. BEM 405

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. BEM 405

Additionally, the parties agreed that divestment occurred and the amount of the divestment is \$31,736.80. The only issue the parties disagreed on was when the penalty period should begin. The Department asserted that the penalty period should begin October 1, 2012. The Department is taking action based on Claimant's October 2012 application. The divestment occurred in September 2010, within the 60 month look back period of the October 2012 application. This Administrative Law Judge finds that the Department properly implemented the divestment penalty period. BEM 405 Therefore the Department's determination of divestment and imposition of divestment penalty was proper and correct.

Claimant's attorney argued that Department policy does not address how to address agency error and that the remedy sought by the Department is not codified in Department policy. Claimant's Attorney further argues that the action sought by the Department is recoupment that is specifically not allowed according to Department

policy BAM 700 page 5. These arguments are based on a scenario where Claimant was continuously eligible for MA and did not file a new application in October 2012 after the August 2012 MA closure for failure to return verifications. The actions the Department took with regard to the previous applications may have been incorrect and may have benefitted the Claimant but those actions have no effect on the October 2012 application and how the Department was required to process that application according to Department policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law finds that the Department:

did act properly when they determined that divestment occurred in the amount of [REDACTED] and imposed a divestment penalty period that ran from October 1, 2012, through February 19, 2013.

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.

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

Date Signed: 07/23/2013

Date Mailed: 07/24/2013

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

AM/pw

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