

**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.: 2013 8251
Issue No.: 2010
Case No.: ██████████
Hearing Date: June 24, 2013
County: Wayne (82)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 24, 2013, from Detroit, Michigan. Participants on behalf of Claimant included ██████████ Attorney for ██████████ the Claimant's surviving spouse, who did not appear. Participants on behalf of the Department of Human Services (Department) included ██████████, FIM, and ██████████, ES. ██████████ Assistant Attorney General, also appeared as attorney for the Department of Human Services.

ISSUE

Did the Department properly 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. The Claimant (now deceased) applied for Medical Assistance while in a long term care facility on August 4, 2011.
2. A verification Checklist was issued on November 1, 2011 requesting current bank statements for all savings checking and money market accounts and records for all assets. An Addendum was attached requesting account information for March, July and August, 2011, mortgage/shelter expense, property taxes for winter and summer, and verification of a onetime lump sum payment.

3. The Claimant through his attorney responded to the November 1, 2011 verification checklist and provided some of the information requested. Exhibit 1 pp. Y.
4. The Department requested verification of assets of the Claimant as part of the application processing and sent a second Verification Checklist dated November 17, 2011 with a due date of November 28, 2011. The verification checklist was not responded to. Exhibit 1 pp. W and X.
5. The verification checklist also requested specific additional information on an Addendum of DHS 3503 Verification Checklist. The Department requested explanation of withdrawals made from the Metropolitan Credit Union and TCF Bank accounts. Exhibit 1 pp. X.
6. The Claimant filed an Asset Declaration on July 8, 2011 indicating Credit Union Shares of \$19,000 and TCF Checking account balance of \$3,001. Exhibit 2, pp. 5.
7. On November 11, 2011 the Claimant by a letter sent to the Department by his attorney indicated the Detroit Metropolitan Credit Union balance remains elusive and indicated Claimant had no statements from January 1, 2011 through March 31, 2011. A rent receipt was provided Exhibit 1, pp. Y.
8. The Claimant submitted an account verification form for Detroit Metropolitan Credit Union indicating balances for March 11, 2011 - \$40,623.56, April 11, 2011 - \$9,952.20, July 31, 2011- \$19,152.20; August 30, 2011 \$19,152. Exhibit 1 pp. D.
9. The Department issued an Initial Asset Assessment Notice on August 14, 2012 which provided that the asset which may be kept by the patient's spouse is \$22,728 and the patient could keep \$2,000. Exhibit, 1 pp. F and H.
10. A Notice of Case Action was issued on August 14, 2012 which imposed a divestment penalty beginning June 1, 2011 through September 3, 2011. The Department imposed the penalty because it determined that no explanation regarding cash withdrawals from the Detroit Metropolitan Credit Union and TFC Bank accounts were received. Exhibit 1 pp. M – O.
11. The Notice of Case action of August 14, 2012 also indicated a patient pay amount of \$973 due to assets in excess of the \$3,000 asset limit.
12. The Department imposed a divestment penalty from June 1, 2011 to September 3, 2011 due to unexplained transfers of \$21,325.28.
13. The Claimant through his attorney requested a hearing on October 19, 2012 regarding the imposition of a divestment penalty and miscalculation of the Patient

Pay amount and recalculation of the patient pay amount due to failure in include shelter expenses.

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 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.

Additionally, Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables (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. 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.

DIVESTMENT PENALTY

Divestment results in a penalty period in MA, not ineligibility. BEM 405 (April 2012), p. 1. 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, p. 1. Less than FMV means the compensation received in return for a resource was worth less than the FMV of the resource. BEM 405, p. 5. Transferring a resource means giving up all or partial ownership in, or rights to, a resource. BEM 405, p. 2. During the penalty period, MA will not pay for long-term care services. BEM 405, p. 1.

The Department imposed a divestment penalty due to unexplained cash withdrawals from Claimant's credit union account and TFC Bank account. The Department as part of a verification check list asked the Claimant to explain cash withdrawals from these accounts in April, May and June and July of 2011. In this case the Claimant contends that the Department improperly found a divestment in the amount of \$21,325.68 based upon the explanation provided by the Claimant regarding the expenditures made from the Claimant's bank account prior to the application for Medical Assistance and during the 5 year look back period. Claimant's attorney also contends that the patient pay amount was incorrectly calculated because no shelter expenses were included. See October 29, 2012 request for hearing. Claimant Exhibit A.

At the hearing counsel for the Claimant asserted that the verifications requested by the Department regarding the cash withdrawals were not required based upon answers

provided in the application that no transfers of ownership of any asset was sold or given away. Exhibit 2 pp. 6 (application). Counsel also contended that the Department was not required to verify or seek information regarding the cash withdrawals based on BEM 405. Lastly, the Claimant's attorney argued that the Department should have used the best available information and found that no divestment had occurred. At issue is whether various cash withdrawals should be deemed divested because the transfer of the funds was not explained.

A response to the November 1, 2011 Verification Checklist was made on behalf of the Claimant by letter dated November 10, 2011. This was the only response received by the Department. A subsequent verification checklist dated November 17, 2011 was not responded to. The Department made its determination based upon the response received. At no time did the Claimant or Claimant's spouse provide any written statements or receipts for any of the expenditures and the deceased Claimant's spouse did not appear at the hearing.

BEM 405 provides:

Verification is not required when the client states he and his spouse have not transferred resources **unless:**

The client's statement is unclear, inconsistent or conflicts with known facts, or

Existing information in the case record indicates divestment may have occurred.

Verify the following to document divestment:

Date of transfer.

Fair market value or cash value.

Uncompensated value.

Verification Sources

Sources to verify transfers and the reasons for them include, but are *not* limited to, the following:

Legal documents.

Payment or tax records.

Bills of sale.

Court or attorney records.

Correspondence regarding the transaction.

Bank books or statements.

BEM 405 pp. 13 and 14 (7/1/12)

The contention by Claimant's attorney that no inquiry by the Department to require verification of cash withdrawals was required because the Claimant's application stated there were no transfers of assets, and that no assets were sold or given away ignores the fact that several months of cash withdrawals in sums larger than \$1,000 were made. Exhibit 1 pp. X. On June 1, 2011 a withdrawal of \$5,000 was made. Given this sum, it would appear that the Client's statement that there were no transfers conflicted and were possibly inconsistent with the facts of the cash withdrawals and the information which tended to indicate that a divestment had occurred. It appears reasonable and responsible for the Department to inquire about the nature of the transactions and seek an explanation of what the expenditure was for, to determine whether an asset was sold or given away. It is noteworthy that at no time were any of the specified withdrawal amounts specifically explained or addressed. At the hearing the Claimant's attorney asserted that the Claimant spent the money on living and household expenses and that the Claimant did not have records or receipts. It was also contended that the lack of receipts were due to the fact that the Claimant's, house had burned down, Claimant was living from relative to relative and had nowhere to keep her records. Aside from this testimony being hearsay, not one receipt was ever provided for any expenditures during April 2011 through July 2011 and it appears replacement of household items, given the unstable nature of the Claimant's living arrangements from relative to relative, would not explain the expenditures.

A review of the letter by Counsel for Claimant responding to the request for verifications is required. The actual verifications that were provided by letter of November 10, 2011 were bank account statements from April 2011 through September, but not the March 2011 account which was not available. The letter advised that the Claimant had no bank statements for January 1, 2011 through March 2011. A rent receipt for \$820 was provided. A statement was made that no property tax obligation existed. Exhibit 1, pp. J.

The Department, based upon the information provided to it, reviewed the information and sent the second verification checklist dated November 17, 2011 requesting an explanation for the cash withdrawals made from the two accounts. As this verification was received by counsel but not responded to, the best available information that the Department had was the bank account information with no explanation as to the basis of the cash withdrawals. Based upon a thorough review of the information available to the Department at the time it determined that a divestment had occurred, it is determined that the Department properly determined that a divestment had occurred as the cash withdrawals went unexplained and were within the 60 month look back period from the application date. Thus it is determined based upon the facts in evidence that the Department's determination that a divestment occurred in the amount of \$21,325.68 was correct, and that its determination that the Claimant was not entitled to long term care services from June 2011 through September 3, 2011 was correct and in accordance with Department policy found in BEM 400 and BEM 405. (7/1/12)

PATIENT PAY AMOUNT

Counsel for Claimant challenged the calculation of the patient pay amount stating in the hearing request that it was incorrect and that no shelter expense was used in computing the Community Spouse Income Allowance. A review of the Community Spouse Income Allowance as calculated by the Department indicates that rent of \$820 and a shelter standard allowance of \$547 (utility allowance) were included in the computation. Exhibit 1, pp. J. A review of the patient pay amount calculation, to the extent that it includes the community spouse allowance, which includes shelter expense, would indicate that this concern is without merit. Likewise, the calculation of the patient pay amount was based on BEM 546 which determines the amount the Claimant must pay from his or her income for long term care. The patient pay amount is determined by subtracting from the total income of the Claimant the total need, which in this case included \$60 for personal needs, and a community spouse income allowance of \$1466. Exhibit 1 pp. P. Based on a review the computation and budget produced by the Department at the hearing, it is determined that the Patient Pay amount of \$990 was correctly computed and was in accordance with the requirements of Department policy found in BEM 546.

It must be noted that in reviewing the Notice of Case Action issued 8/14/12 that the Department indicated the patient pay amount was \$973 instead of \$990 provided by the budget which determined the patient pay amount for June 2011. (See Exhibit 1 pp M and N and P. This discrepancy was not explored or explained at the hearing as it was not discovered at that time, therefor the Department must correct the discrepancy retroactive to June 2011.

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 it found a divestment in the amount of \$21,325.68 and imposed a divestment penalty for the months of June 2011 through September 2011. The Department properly calculated the Community Spouse Allowance and Patient Pay amount .

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED REVERSED for the reasons setforth in this Decision regarding the imposition of the Divestment Penalty and the calculation of the Patient Pay amount and Community Spouse allowance.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law finds that the Department must review and correct the Patient Pay amount discrepancy for June 2011 ongoing to determine whether the \$990 or \$973 amount is correct.

The Department is REVERSED with respect to the patient pay amount discrepancy between the \$990 calculated as part of the budget and the amount indicated in the Notice of Case Action issued 8/14/12. Accordingly, it is ORDERED:

1. The Department shall review the patient pay amount beginning June 2011 and determine the correct amount and retroactively adjust the patient pay amount beginning June 1, 2011 ongoing to reflect the correct amount.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 15, 2013

Date Mailed: July 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

LMF/cl

cc:

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