

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-31670
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: July 8, 2013
County: Macomb DHS (12)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 July 8, 2013, from Clinton Township, Michigan. Participants included Nancy Nawrocki as legal counsel for Claimant. [REDACTED] testified on behalf of Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED] as legal counsel for DHS. Participants on behalf of the Department of Human Services (DHS) included [REDACTED] y [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly imposed a divestment penalty against Claimant.

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 was the co-owner of a homestead along with his spouse, son and daughter-in-law.
2. In 1990, Claimant's son paid \$25,841 toward the purchase of the homestead.
3. In 4/2008, the homestead was sold for \$100,764.67, \$14,000 of which was paid to Claimant.
4. At the time of 4/2008, Claimant was an 88 year old man.

5. On 12/24/12, Claimant applied for MA benefits.
6. On 2/15/13, DHS determined that Claimant was eligible for MA benefits, subject to a divestment penalty from 12/1/12-3/7/13, based on \$24829.85 in divested monies.
7. On 2/25/13, Claimant's attorney requested a hearing to dispute the divestment penalty.

CONCLUSIONS OF LAW

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. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The present case concerns a dispute of a divestment penalty imposed by DHS against Claimant for the period of 12/1/12-3/7/13. It was not disputed that the divestment penalty was based on allegedly divested assets related to the sale of a house.

Transfers exclusively for a purpose other than to qualify or remain eligible for MA are not divestment. BEM 405 (1/2013), p. 9. DHS is to assume transfers for less than fair market value were for eligibility purposes until the client or spouse provides convincing evidence that they had no reason to believe LTC or waiver services might be needed. *Id.*

It was not disputed that Claimant (and his spouse) co-owned his homestead with his son (and son's wife). It was not disputed that that a sale of Claimant's homestead in 4/2008 netted Claimant \$14,000, substantially less than half the proceeds of the sale. Claimant's attorney contended that the payment received by Claimant was appropriate based on a verbal agreement between Claimant and his son made in 1990. Claimant's son testified that he made all mortgage payments on the homestead and that his father was to pay all other costs associated with the homestead including condominium fees. Claimant's side contended that Claimant and his son had an unwritten agreement that When the home was sold, the son would be reimbursed the costs of the original home price and any profits would be divided equally between Claimant and son. DHS considered the failure by Claimant to receive half of the total home sale price to be divestment. The primary dispute was whether Claimant's receipt of less than half of the homestead's proceeds was a purposeful attempt to divest money, or the completion of a verbal contract that had existed since 1990, the year the homestead was purchased.

Generally, real property contracts must be written in order to be binding. This is not a directly applicable law but it is indicative that real property agreements are typically put in writing because, generally, oral contacts are not binding; thus some significance

could be placed into Claimant's and his son's failure to have a written contract. However, it is also not unexpected for a father and son to have a verbal agreement regarding real property. As it happened, there was no squabble concerning the home's proceeds between Claimant and his son; this tends to lessen the importance of the absence of a written contract.

It was not disputed that Claimant's son verified that he paid \$25,841 down on the home. Verification of a down payment by Claimant's son in excess of one third of the sale price makes it more likely that the son would also be responsible for the ongoing payments.

It was not disputed that Claimant's assigned specialist suggested that Claimant's son could submit verification of any mortgage payments or city taxes as support of the alleged agreement between Claimant and his son. It was also not disputed that Claimant's son failed to provide DHS with any such records. Claimant's son responded that he made multiple attempts to contact his bank but to no avail. He also testified that his bank happened to change names multiple times since 2008 and that this was a likely contributor to the bank's inability to access four year old records. He further testified that he did not keep banking records over four years old. Claimant's son's testimony seemed credible enough, however, it is problematic that DHS was receptive to verification submissions and that Claimant's son failed to provide any.

To Claimant's attorney's dismay, DHS factored Claimant's age in the divestment decision. It was not disputed that Claimant was 88 years old at the time of 2008. DHS cited an actuarial table showing that Claimant's life expectancy was 4.55 years (see *Id.*, p. 16). Claimant's attorney contended that DHS committed ageism by factoring Claimant's age into the divestment decision. Claimant's attorney's contention was unpersuasive.

It is highly appropriate to believe that a person with a 4.55 year life expectancy to be more inclined to purposely divest assets for the purpose of becoming MA eligible than a person with a significantly longer life expectancy. As it happened, Claimant passed away in his 92nd year, very near to the predicted life expectancy. Not that a life expectancy table is fool-proof, but it is exceptionally reasonable to assume that a four year life expectancy increases a probability of divestment.

Claimant's attorney noted that not all 88 year olds are in poor health and that some are in better health than a person half their age. Other testimony presented by Claimant's witnesses suggested that Claimant was had a high level of health at the time that the home was sold. In fact, this did not appear to be true. Within two months of the homestead's sale, Claimant sought assistance for in-home services. Medical documentation verified that Claimant had back surgery in 4/2008 (the same month that the home was sold) and that he needed bathing assistance (see Exhibits 12-13). Claimant's side tried to downplay Claimant's need for assistance, but the medical record was unequivocal. This evidence was very suggestive that the inequitable division of home sale proceeds was a divestment.

A regretful omission from the hearing was testimony explaining why Claimant's homestead was sold when it was. Alas, no explanation was provided.

It was not disputed that Claimant's son and his son's wife were the original owners of the property (see Exhibit 25). It was also established that ownership was later updated to include Claimant and his spouse. The fact that Claimant's son and his spouse were the only persons on the original deed is somewhat consistent with the claim that Claimant's son was entitled to a larger share of the sale proceeds because he made mortgage payments.

It was not disputed that the home was sold in 4/2008. Though the home sale was within the five year look-back period for divestment, it happened to be relatively far back in the look-back period. Claimant's need for MA began in 12/2012, approximately four and a half years after the homestead was sold. Generally, the more time that passes between a questionable transaction and an MA benefit application, the more likely that divestment did not occur.

The present case involved a transaction netting Claimant \$14,000 and a potential divestment of \$24,829.85 (as calculated by DHS). Generally, transactions that involve purposeful divestment do not result in any net proceeds for a claimant. Perhaps Claimant and his son were being very clever in disguising divestment, but the most likely explanation for Claimant receiving half of the home's net profit and not gross profit is the existence of a verbal agreement between Claimant and son.

Based on the presented evidence, it is found that the division of sale proceeds from Claimant's homestead was a transfer of property for a purpose other than divestment. Accordingly, the DHS divestment penalty is found to be improper.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly imposed a divestment penalty against Claimant. It is ordered that DHS:

- (1) remove the divestment penalty against Claimant for the period of 12/1/12-3/7/13;
- and
- (2) supplement Claimant for benefits, if any, as a result of the improper divestment penalty.

The actions taken by DHS are REVERSED.



Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 7/24/2013

Date Mailed: 7/24/2013

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

CG/hw

cc:

