

**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.: 2013-42929
Issue No.: 2010
Case No.: ██████████
Hearing Date: January 20, 2012
County: Allegan

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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 conducted from Detroit, Michigan on Monday, July 18, 2013. The Claimant did not appear; however her Authorized Hearing Representative ██████████ h ██████████ appeared and testified on her behalf. Participating on behalf of Department of Human Services ("Department") was ██████████.

ISSUE

Whether the Department properly imposed a divestment penalty for the period from April 1st through April 8, 2013 based on the transfer of an asset for less than fair market value?

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 resides in a long-term care facility.
2. In connection with a redetermination, on January 31, 2013, the Department sent Verification Checklist to Claimant seeking verification of asset(s) and a life insurance policy with a due date of February 11, 2013. (Exhibit 1, pp. 16 – 19)
3. On February 8, 2013, the Department received a note stating Claimant no longer had an account at a credit union and that the surrender value of the life insurance policy that issued on April 6, 1999, was not known. (Exhibit 1, pp. 20, 21, 28)

4. On March 18, 2013, the Department sent a Notice of Case Action to Claimant informing her that MA benefits would terminate effective April 1, 2013 based on the failure to submit the requested verifications. (Exhibit 1, pp. 22 – 27)
5. On March 28, 2013, a copy of the life insurance policy was submitted to the Department. (Exhibit 1, pp. 28 – 30)
6. On April 1, 2013, Claimant's MA terminated.
7. On April 5, 2013, the ownership of Claimant's life insurance was transferred to Claimant's son. (Exhibit 1, p. 32)
8. The insurance policy was for [REDACTED] and at the 14th year had a cash value of [REDACTED] (Exhibit 1, p. 28, 30)
9. On April 10, 2013, MA coverage was reinstated and due to the transfer of ownership of the life insurance policy, a divestment penalty was imposed for the period from April 1st through April 8, 2013.
10. On April 22, 2013, the Department received Claimant's written request for hearing.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges 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 results in a penalty period in MA, not ineligibility. BEM 405 (January 2013), 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. The giving away of an asset results in divestment. BEM 405, p. 2. During the penalty period, MA will not pay for long-term care services. BEM 405, p. 1.

A divestment penalty is not imposed when it creates an undue hardship. BEM 405, p. 1. Unless evidence to the contrary is submitted, no undue hardship is assumed. BEM 405, p. 13. Undue hardship exists when the client's physician says necessary medical is not being provided and client needs treatment for an emergency condition. BEM 405, p. 13. A medical emergency exists when a delay in treatment may result in the person's death or permanent impairment of the person's health. BEM 405, p. 13. A psychiatric

emergency exists when immediate treatment is required to prevent serious injury to the person or others. BEM 405, p. 13.

In this case, ownership of a life insurance policy with a cash surrender value of \$1,950.00 was transferred to Claimant's son for no consideration. The transfer was for less than fair market value, as such, is a divestment. During the hearing, Claimant's daughter asserted that the imposition of the divestment penalty created an undue hardship on Claimant. There was no evidence that medical evidence was not provided; that a medical emergency existed; or that a psychiatric emergency existed. Instead, a letter written on behalf of Claimant by the attending physician provides that Claimant has complex medical needs that require 24 hour care in the nursing home; therefore, Claimant is unable to leave the nursing home. As such, despite the imposition of the divestment penalty, medical treatment was provided. Accordingly, an undue hardship was not established. In light of the foregoing, the Department established it acted in accordance with Department policy when it imposed the divestment penalty as a result of the transfer of an asset for less than FMV. Accordingly, the Department's determination is AFFIRMED.

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 established it acted in accordance with Department policy when it imposed the divestment penalty due to a transfer of an asset for less than fair market value.

Accordingly, it is ORDERED:

The Department's imposition of the divestment penalty is AFFIRMED.



Colleen M. Mamelka
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 30, 2013

Date Mailed: July 30, 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 effect the substantial rights of the claimant:
 - the 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

CMM/tm

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