



4. On June 26, 2013, Claimant's son, possessing durable power of attorney, requested a hearing to protest the Department's classification of Claimant's \$5,700 transfer as divestment.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

At the hearing, the AR argued that Claimant's checks, written to relatives on December 24, 2012, were a continuation of a practice that Claimant performed around the same time of year as "payment" for having done various duties for her.

BEM 405 is clear that assets transferred after the "baseline date" of December 24, 2012, and during a look-back period of 60 months must pass a fair market value test. In other words, assets may only be transferred during this period of time for fair market value to avoid a ruling of divestment. BEM 405 (October 2012).

Here, no effort was made to delineate the value that Claimant was receiving for this transfer to her three sons. The AR recounted how his mother performed the same function a number of times and that this transfer was the same as previous transfers.

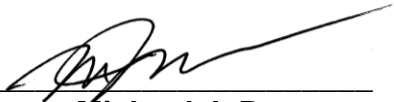
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department

- acted in accordance with Department policy when it classified Claimant's transfer of \$5,700 to her sons as divestment and imposed a 24-day penalty for such divestment.
- did not act in accordance with Department policy when it .
- failed to satisfy its burden of showing that it acted in accordance with Department policy when it .

**DECISION AND ORDER**

Accordingly, the Department's decision is

- AFFIRMED.
- REVERSED.
- AFFIRMED IN PART with respect to \_\_\_\_\_ and REVERSED IN PART with respect to \_\_\_\_\_.

  
\_\_\_\_\_  
**Michael J. Bennane**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: November 21, 2013

Date Mailed: November 21, 2013

**NOTICE OF APPEAL:** 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

2013-62123/MJB

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-07322

MJB/pf

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