

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

**IN THE MATTER OF:**

██████████  
██████████████████  
██████████████████████████████  
██████████

Reg. No.: 2013 67293  
Issue No.: 2010  
Case No.: ██████████  
Hearing Date: October 31, 2013  
County: Wayne (82)

**ADMINISTRATIVE LAW JUDGE:** Lynn M. Ferris

**HEARING DECISION**

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in person hearing was held on October 31, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant's attorney, ██████████, and a witness, ██████████ the Claimant's son. Participants on behalf of the Department of Human Services (Department) included ██████ ██████, Assistance Payments Supervisor, and ██████████ ES.

**ISSUE**

Did the Department properly find that the Claimant's transfers to her son of cash and real estate in the amount of \$511,829.89 were a divestment?

**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 applied for medical assistance on June 27, 2013. The Claimant was admitted it into a long-term care facility on August 3, 2012.
2. The Department issued a Notice of Case Action on August 12, 2013 and imposed a divestment penalty for the period beginning June 1, 2013 through June 8, 2021 contending that the Claimant transferred assets or income for less than their fair market value. The divestment period imposed by the Department was for a total of 67 months and two days. The total divestment amount as determined by the Department was \$511,829.89. Exhibit 2.

3. The Claimant's son was found by his then employer, the [REDACTED], after medical examination and confirmation to be disabled and eligible for disability benefits on August 13, 1994, Exhibit 1, pp. 8-10.
4. The Claimant transferred \$511,829.89 in cash and real estate to her son.
5. The Claimant's Attorney requested a hearing on August 23, 2013 protesting the Department's determination that a divestment had occurred and contended that the transfers by the Claimant to the Claimant's disabled child were not a divestment according to Department Policy.

### **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.

Additionally, In this case the issue is whether the Claimant's transfers of cash and real estate to her son were properly deemed by the Department as a divestment due to its determination that

- the Claimant's son was not disabled because he had not applied for Medicaid for a disability determination;
- the Claimant's son did not supply evidence that he has applied for Social Security Disability with the Social Security Administration; and
- The Claimant's son did not meet the criteria as he was not a Disabled Adult Child.

At the hearing the attorney for the Claimant presented evidence that the Claimant's son worked for the [REDACTED] from [REDACTED] when he was awarded permanent disability by the [REDACTED]. During the period of his employment until disabled, the Claimant's son did not participate in the Social Security program as his employer, the [REDACTED] was a non-participating employer of SSA payroll tax system having set up its own plan. Therefore, the Claimant's attorney demonstrated that the Claimant's son could not apply for RSDI to the Social Security Administration, and is not otherwise eligible to receive Social Security. Claimant Exhibit A, pp. 1-4.

Also submitted with the Claimant's application for Medical Assistance was a Resolution of the [REDACTED] awarding duty disability retirement for [REDACTED]. In the Resolution it noted that [REDACTED] had become totally, permanently incapacitated due to personal injury arising out of his appointment with the [REDACTED]. Thereafter, the Medical Director issued a report in support of the award of duty disability retirement. This finding and the disability was certified as of August 13, 1994. Since August 13, 1994 the Claimant's son testified that he has not worked due to his ongoing physical impairments. Exhibit 1 pp. 8 – 10.

At the hearing it was established that the Department did not seek any verification by way of medical records or otherwise regarding the Claimant's son's disability. Based upon the evidence presented which included the resolution by the [REDACTED] finding the Claimant disabled and entitled to disability benefits it is determined that there is no basis in DHS Policy for the Department's determination that the Claimant's transfers were a divestment. The Department erroneously determined that because no proofs were submitted to substantiate that [REDACTED] had applied for Medicaid with the DHS, the failure to submit evidence submitted that he applied for Social Security disability and that he was not a Disabled Adult Child he was not disabled within the meaning of BEM 405.

In order to determine whether a divestment has occurred, two DHS Policy provisions must be examined. The first policy is found in BEM 405 which establishes whether or not a transfer is a divestment. BEM 405 provides:

Transfers to the client's **blind or disabled (see BEM 260) child**, regardless of the child's age or marital status, are **not** divestment. This includes transfers to a trust established SOLELY FOR THE BENEFIT OF the child. BEM 405 pp. 9 (7/1/13) (emphasis supplied).

This provision clearly directs that regardless of the child's age, if the transfer is made to the client's disabled child, a divestment has **not** occurred. The provision does not require that the disabled child fit the definition of Disabled Adult Child found elsewhere in Department policy.

A review of BEM 260 is useful and required by the direction given by BEM 405. A definition of disability is contained in BEM 260 and provides:

A person is **disabled** when **all** of the following are true:

- He has a medically determined physical or mental impairment.
- His impairment prevents him from engaging in any substantial gainful activity.
- His impairment

- Can be expected to result in death, or
  - Has lasted at least 12 consecutive months, or
  - Is expected to last at least 12 consecutive months.
- BEM 260, pp. 10, (7/1/13)

Applying the definition of disabled based upon the facts and medical evidence presented, directs that the Claimant's son is disabled under the definition provided in BEM 260 for the following reasons. Based on his long-standing receipt of disability benefits from the [REDACTED] and its certification that the Claimant is disabled, both legally and by virtue of a medical report, it is determined that the Claimant's son has a medically determined physical or mental impairment resulting in disability.

The evidence also established that the Claimant's son's back condition has lasted at least 12 consecutive months as he has been determined disabled since [REDACTED]. Further, a review of the medical evidence presented at the hearing regarding Claimant's son's medical condition further documents numerous areas of herniated discs in his lumbar spine with disc(s) bulging, central lumbar spinal stenosis and right radiculopathy of the right leg. The records also note positive straight leg raising on the right side. The medical reports presented cover an extended period of years, and consistently conclude that the Claimant's son's condition demonstrates disc disease and acquired spinal stenosis. Repeated consultative exams ordered by the [REDACTED] as late as 2003 continued to find the Claimant's son disabled. The medical reports indicate that he is unable to sit, stand, or walk for any length of given time. It is noted further that at the hearing the Claimant's son, who was a witness, was unable to remain seated due to back pain. Claimant Exhibit B and Exhibit 1 pp.8-10.

An additional submission was made by the attorney for the Claimant as a supplement to the June 26, 2013 Medicaid application. This submission further advised the Department that the Claimant's son, [REDACTED] is disabled and receives monthly disability benefits from the [REDACTED].

Also submitted with the application for Medicaid by the Claimant was a full accounting of the cash and real estate asset transfers. The parties agree as to the dollar amount of the transfers.

Based upon the documentary evidence submitted at the hearing, including the medical evidence presented, the continuing receipt of disability benefits by the Claimant's son due to his continuing disability from his former employer, that fact that the Claimant's son is not eligible to apply for RSDI because his former employer did not contribute to the social security payroll tax system, and the fact that the Claimant's son is not eligible to receive SSI because he currently continues to receive disability benefits from a third party, it is determined the Claimant's son has satisfied the requirements of BEM 405 and is determined to be a disabled child and has met the definition of disability contained in BEM 260 definition of disability.

No review by the Medical Review Team is necessary or required under the factual circumstances of this case as the Claimant's son meets the disability factor. BEM 260.

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 did not act in accordance with Department policy when it determined that the Claimant's transfers to her disabled child were a divestment.


**DECISION AND ORDER**

Accordingly, the Department's decision is

REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall reprocess the June 26, 2013 application in accordance with the determination made in this Decision, that the Claimant's child is disabled and no divestment has occurred.
2. The Department shall notify the Claimant's attorney of its determination after reprocessing of the application by Notice of Case Action.



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

Date Signed: November 13, 2013

Date Mailed: November 13, 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:

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

LMF/cl

cc:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]