

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 201365197  
Issue No.: [REDACTED]  
Case No.: [REDACTED]  
Hearing Date: November 7, 2013  
County: Livingston

**ADMINISTRATIVE LAW JUDGE:** Gary F. Heisler

**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, a telephone hearing was held on November 7, 2013, from Lansing, Michigan. Claimant was represented by her attorney [REDACTED]. Claimant's son, [REDACTED] and her CPA [REDACTED] appeared and testified. Participants on behalf of the Department of Human Services (Department) included [REDACTED], [REDACTED] and Program Manager [REDACTED].

**ISSUE**

Did the Department determine the proper amount of Claimant's divestment during her five year look back period?

**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 approved for Medical Assistance (MA) beginning February 1, 2013. The Department calculated a divestment penalty period from February 1, 2013 until August 18, 2015.
2. On August 16, 2013, Claimant's attorney submitted a request for hearing.

## **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.

It is undisputed that the Department is concerned with the Edward Jones account #964-11828-1-2 which is jointly owned by Claimant and her son, R. Williamson. Department of Human Services Bridges Eligibility Manual (BEM) 400 (2013) pages 10-12 provides guidance on jointly owned assets. For the purpose of assigning the value/portion of a jointly owned asset, Department policy divides them into "joint cash and retirement plans" or "other joint assets."

Department exhibit page 9 lists account number 9641182812 as liquid asset type "stocks, bonds, or mutual funds. Evidence presented by Claimant also describes the account as being made of stocks and bonds.

BEM 400 page 14 lists cash assets as: Money/currency; Uncashed checks, drafts and warrants; Checking and draft accounts; Savings and share accounts; Money market accounts; LTC patient trust fund and all other money held by the facility for the patient; Money held by others; and Time deposits. The jointly owned Edward Jones account #964-11828-1-2 is not a cash account.

BEM 400 page 25 lists retirement plans as: Individual retirement accounts (IRAs); Keogh plans (also called H.R. 10 plans); 401k plans; Deferred compensation; Pension plans; and Annuities-- An annuity is a written contract establishing a right to receive specified, periodic payments for life or for a term of years. The jointly owned Edward Jones account #964-11828-1-2 is not a retirement plan.

In accordance with BEM 400 pages 10-12, the jointly owned Edward Jones account #964-11828-1-2 is an "other joint asset." The policy directs "count an equal share for each owner" There is also a note: If specified otherwise by the ownership document, each owner's share is the amount specified. There is no ownership document in evidence for the jointly owned Edward Jones account #964-11828-1-2.

The Department treated the jointly owned Edward Jones account #964-11828-1-2 as a cash asset and calculated the divestment penalty at issue using the entire amount of the account as Claimant's.

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 calculated the divestment penalty at issue in this hearing.

**DECISION AND ORDER**

Accordingly, the Department's decision **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. Re-determine Claimant's Medical Assistance (MA) eligibility in accordance with Department policy.

/s/

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Gary F. Heisler  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: 11/25/2013

Date Mailed: 11/26/2013

**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.

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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

GFH/sw

cc:

