

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201368034
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: November 14, 2013
County: Iosco

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 14, 2013, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] as attorney and authorized hearings representative.. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [REDACTED].

The Claimant's attorney stated on the record that he was only protesting the determination of the divestment penalty, and the issue of Medical Assistance (M.A.) for September of 2012 has been resolved.

ISSUE

Whether the Department of Human Services (Department) properly apply a divestment penalty to the Claimant's Medical Assistance (M.A.) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Claimant submitted a Medical Assistance (M.A.) application requesting assistance with Long Term Care (LTC) on September 26, 2013.
2. On May 30, 2013, the Department notified the Claimant that Medical Assistance (M.A.) had been denied for September of 2012.
3. On November 13, 2012, the Department notified the Claimant that a divestment penalty would be applied to her Long Term Care (LTC) Medical Assistance (M.A.).

4. The Department received the Claimant's request for a hearing on August 28, 2013, protesting the denial of Medical Assistance (M.A.) for September of 2012, and the application of a divestment penalty on the Claimant's Long Term Care Medical Assistance (M.A.).

CONCLUSIONS OF LAW

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.

The Claimant submitted a Medical Assistance (M.A.) application requesting assistance with Long Term Care (LTC) on September 26, 2013. The Department determined that a divestment had occurred, and that a penalty period would apply against her entitlement to Medical Assistance (M.A.).

It is the Department's burden to present evidence to establish that it properly applied its policies to the Claimant's circumstances. In this case, the Department conceded that it was unable to meet that burden, but was unable to properly implement changes to the Claimant's benefit case due to issues with its computer system.

The Department's representative testified that a help desk ticket has been requested to properly implement its determination of the Claimant's eligibility for Medical Assistance (M.A.).

The Department's eligibility determination is reversed.

DECISION AND ORDER

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined the divestment penalty to be applied to the Claimant's Medical Assistance (M.A.) benefits.

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. Implement a help-desk ticket as necessary to process the Claimant's eligibility for Long Term Care (LTC).

2. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.
3. Issue the Claimant any retroactive benefits she may be eligible to receive, if any.

/s/
Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 11/15/2013

Date Mailed: 11/15/2013

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.

201368034/KS

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

KS/sw

cc:

