

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

IN THE MATTER OF:



Reg. No.: 201327788
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: November 5, 2013
County: Lapeer County DHS

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, an in-person hearing was held on November 5, 2013, from Lapeer, Michigan. Participants on behalf of Claimant included [REDACTED] the Claimant's attorney, and witnesses [REDACTED] and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Assistant Attorney General [REDACTED] and [REDACTED] an employee of the Department of Human Services.

ISSUE

Did the Department of Human Services (the department) properly determine that claimant had divestment and a penalty period for Medical Assistance (MA-Long Term Care)?

FINDINGS OF FACT

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

1. In May of 2010, the Claimant was in joint possession of a bank account when another joint owner made a \$ [REDACTED] withdrawal from that account.
2. On July 26, 2010, the Claimant's attorney petitioned the Lapeer County Probate Court with a claim that the withdrawal from the Claimant's joint account was wrongful.
3. On October 5, 2010, the Claimant signed a memorandum of understanding, which included provisions for the return of funds withdrawn in May of 2010, and

payment of long term care expenses in the event that the Claimant might not be eligible for Medical Assistance (M.A. – Long Term Care).

4. On October 4, 2012, the Claimant was admitted to a nursing home.
5. On November 28, 2013, the Claimant's representative submitted an application for Medical Assistance (MA) – Long Term Care on the Claimant's behalf.
6. On November 29, 2012, the Department sent the Claimant a Verification Checklist (DHS-3503).
7. On December 20, 2012, the Department determined that the withdrawal of funds from the Claimant's bank account in May of 2010, was a divestment and that a penalty period would apply towards her eligibility for Long Term Care.
8. The Department received the Claimant's request for a hearing on February 4, 2013, protesting the Long Term Care penalty determination.

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.

Title XIX of the Social Security Act, commonly referred to as "The Medicaid Act," provides for medical assistance services to individuals who lack the financial means to obtain needed health care. 42 U.S.C. §1396.

The Medicaid program is administered by the federal government through the Centers for Medicaid and Medicare Services (CMS) of the Department of Health and Human Services (HHS). The state and federal governments share financial responsibility for Medicaid services. Each state may choose whether or not to participate in the Medicaid program. Once a state chooses to participate, it must operate its Medicaid program in accordance with mandatory federal requirements, imposed both by the Medicaid Act and by implementing federal regulations authorized under the Medicaid Act and promulgated by HHS.

A resource is an asset that an individual is entitled to. When a resource is transferred, and that transfer is found to be a divestment, the Department will apply a penalty period against the client's eligibility for Medical Assistance (M.A.) and will not pay for Long Term Care during the penalty period. When a client jointly owns a resource, any action by the client or by another owner that reduces or eliminates the client's ownership or control is considered a transfer by the client. Department of Human Services Bridges Eligibility Manual (BEM) 405 (October 1, 2012), pp 1-3.

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. Not all transfers are divestment. Examples of transfers include:

- Selling an asset for fair market value (not divestment).
- Giving an asset away (divestment).
- Refusing an inheritance (divestment).
- Payments from a MEDICAID TRUST that are not to, or for the benefit of, the person or his spouse; see BEM 401 (divestment).
- Putting assets or income in a trust; see BEM 401.
- Giving up the right to receive income such as having pension payments made to someone else (divestment).
- Giving away a lump sum or accumulated benefit (divestment).
- Buying an annuity that is not actuarially sound (divestment).
- Giving away a vehicle (divestment).
- Putting assets or income into a Limited Liability Company (LLC). BEM 405, p 2.

Transfers exclusively for a purpose other than to qualify or remain eligible for MA are not divestment. BEM 405, p 9.

In this case, the Claimant was in joint possession of a bank account. In May of 2010, another joint owner of that account made a withdrawal of \$ [REDACTED] from that account making those funds unavailable to the Claimant. On July 26, 2010, the Claimant's attorney petitioned the Lapeer County Probate Court with a claim that the withdrawal from the Claimant's joint account was wrongful. On October 5, 2010, the Claimant signed a memorandum of understanding, which included provisions for the return of funds withdrawn in May of 2010, and payment of long term care expenses in the event that the Claimant might not be eligible for Medical Assistance (M.A. – Long Term Care).

On October 4, 2012, the Claimant was admitted to a nursing home and on November 28, 2013, the Claimant's representative submitted an application for Medical Assistance (M.A.) – Long Term Care on the Claimant's behalf.

On November 29, 2012, the Department sent the Claimant a Verification Checklist (DHS-3503) and the Claimant supplied the Department with the information necessary to determine her eligibility to receive benefits. On December 20, 2012, the Department determined that the withdrawal of funds from the Claimant's bank account in May of

2010, was a divestment and that a penalty period would apply towards her eligibility for Long Term Care.

The Claimant's attorney argued that the withdrawal of funds in May of 2010, was not an act of the Claimant but was against her wishes. The Claimant's attorney argued that this withdrawal of cash assets was a transfer exclusively for a purpose other than to qualify or remain eligible for Medical Assistance (M.A.) because the joint owner's actions were entirely contrary to the Claimant's needs.

However, the October 5, 2010, memorandum of understanding indicates that the Claimant understood and contemplated a future need for long term medical care and that she would be required to make financial arrangements to cover the cost of this care.

Therefore, this Administrative Law Judge finds that the Department properly determined that the withdrawal of funds from the Claimant's account was a divestment and not a withdrawal for another purpose. Based on the evidence and testimony available during the hearing, the Department has established that it properly determined that a penalty period would apply towards the Claimant's eligibility for Medical Assistance (M.A. – Long Term Care).

The Claimant's attorney argued that the Department failed to provide the Claimant with adequate notice of its eligibility determination and also failed to establish that it properly determined the penalty period with sufficient evidence or witness testimony.

The Department has the burden to present evidence to establish that its eligibility determination was in accordance with applicable Department policy. In this case, it was not argued that the determination of the penalty period or valuation of the transferred asset was improper, but instead that the transfer should not have been considered a divestment.

This Administrative Law Judge finds that the Claimant and her representatives received adequate and timely notice of the Department's eligibility determination.

The Claimant has the burden of establishing eligibility to receive benefits. This Administrative Law Judge finds that the Claimant has failed to establish eligibility to receive Medical Assistance (M.A. – Long Term Care) during the penalty period as a result of the Department's finding of a divestment. Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that any inadequacies in the presentation of the Department's case are harmless error and not a failure to establish compliance with policy.

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 acted in accordance with Department policy when it determined that a penalty period would apply towards the Claimant's eligibility for Medical Assistance (M.A. -- Long Term Care).

Accordingly, the Department's decision is **AFFIRMED**.

/s/ _____
Kevin

_____ Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: December 17, 2013

Date Mailed: December 19, 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.

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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/hj

cc:

