

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201345723
Issue No: 2010
Case No: [REDACTED]
Hearing Date: November 20, 2013
Marquette County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, an in-person hearing was held on Wednesday, November 23, 2011. Claimant personally appeared with her authorized representative, [REDACTED] [REDACTED]

ISSUE

Was divestment established?

FINDINGS OF FACT

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

1. On May 25, 2012 the claimant entered a nursing facility.
2. On June 19, 2012 claimant's daughter with power of attorney over claimant's estate spent \$ [REDACTED] for a new Toyota vehicle in joint ownership. This car was parked in the daughter's garage away from the nursing facility.
3. On June 29, 2012 the daughter spent \$ [REDACTED] for a vacuum cleaner for maintenance of claimant's Homestead.
4. On April 12, 2013 the DHS notified the claimant of the divestment penalty of three months and 24 days based on a divestment of \$ [REDACTED]

CONCLUSION OF LAW

The DHS claims there was divestment because the purchase of the car and vacuum cleaner had no intrinsic value to the claimant; and that the new car was never parked at the nursing facility for the claimants use, but parked in the daughters garage; and that the purchase of the vacuum cleaner had no intrinsic value to the claimant, because she had no use for a cleaner in the nursing facility.

The claimant claims there was no divestment in the purchase of the car because it was for her use; that the daughter used the car to drive to the nursing facility to pick up the claimant and drive her on shopping errands; and that the car is parked with the daughter as a convenience.

MA DIVESTMENT

DEPARTMENT POLICY

MA ONLY

Divestment results in a penalty period in MA, **not** ineligibility. Only LTC and waiver clients (see BEM 106) are penalized. Divestment policy does **not** apply to Qualified Working Individuals (BEM 169). BEM, Item 405, p. 1.

Divestment means a transfer of a resource (see "RESOURCE DE FINED" below) by a client or his spouse that:

- . is within a specified time (see "LOOK-BACK PERIOD" below), and
- . is a transfer for "LESS THAN FAIR MARKET VALUE," and

Note: See "Annuity Not Act uentially Sound" and "Joint Owners and Transfers" below and BEM 401 about special transactions considered transfers for less than fair market value.

- . is not listed below under "TRANSFERS THAT ARE NOT DIVESTMENT." BEM, Item 405, p. 1.

Transfer by Representatives

Treat transfers by any of the following as transfers by the client or spouse.

- . Parent for minor
- . Legal guardian
- . Conservator
- . Court or administrative body
- . Anyone acting in place of, on behalf of, at the request of or at the direction of the client or spouse. BEM, Item 405, p. 2.

Joint Owners and Transfers

When a client jointly owns a resource with another person(s), 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.

The same policy applies to resources that client's spouse owns jointly with other persons.

Exception: No penalty is imposed if the parties involved verify that the resource transferred actually belonged solely to the person to whom it was transferred. BEM, Item 405, pp. 2-3.

Based on the above policy, relatives (daughter and brother) can be paid for services. But, it is assumed that any services provided for are free.

There is a rebuttable signed presumption that services by a relative are free, unless for example there is a written sign agreement at the time services were first provided. In this case there was no evidence that the daughter and claimant agreed to the mentioned transfer of money resources into a new car with joint ownership. Nor was there any written agreement introduced with the brother for the purchase of a vacuum cleaner for his service maintenance of claimant's Homestead.

Therefore, this ALJ finds divestment of claimant's money resources was established.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that . Divestment of money resources in the amount of \$ [REDACTED] (\$ [REDACTED] plus \$ [REDACTED] was established.

Accordingly, MA-P approval with a penalty period of three months and 24 days is **UPHELD** and so Ordered.

/s/
William A. Sundquist
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: December 3, 2013

Date Mailed: December 3, 2013

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

WAS/tb

cc:

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