

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-2491
Issue No(s): 2008
Case No.: [REDACTED]
Hearing Date: December 3, 2013
County: Marquette County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 December 3, 2013, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] and [REDACTED], son. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Assistant Attorney General, [REDACTED] Assistance Payments Supervisor, and [REDACTED] Eligibility Specialist. The hearing record was left open through December 9, 2013 pursuant to an Interim Order Extending the Record.

ISSUE

Did the Department properly apply a divestment penalty to the Claimant's Medicaid case?

FINDINGS OF FACT

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

1. On January 31, 2013, the Claimant applied for Medicaid.
2. The Claimant passed away on April 12, 2013.
3. On July 23, 2013, a Notice of Case Action was issued stating Medicaid was approved for January 2013 through April 2013, denied May 2013 and ongoing, and denied June 2013 and ongoing noting there is a divestment penalty.
4. On September 30, 2013, a request for hearing was filed on the Claimant's behalf.

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.

An authorized hearing representative must be authorized or have made application through probate court before signing a hearing request for the Claimant. However, the spouse of a deceased Claimant may file a hearing request. A spouse may also hire an attorney to be the authorized hearing representative. No verification of the authorized hearing representative's prior authorization is required when the authorized hearing representative is the client's attorney at law, parent or, for MA only, spouse. BAM 600 (7/1/2013) pages 2-3. In this case, the spouse is incapacitated and has had a Power of Attorney since December 13, 2012. The Power of Attorney signed the Authority to Act as Authorized Representative and Authorized Hearing Representative on December 20, 2012. The September 30, 2013 hearing request was properly filed by the attorney, previously authorized by the Power of Attorney for the incapacitated spouse of the deceased Claimant.

BEM 405 addresses Medicaid Divestment. Divestment means a transfer of a resource by a client or his spouse that are all of the following: (1) is within a specified look back period; (2) is a transfer for less than fair market value; and (3) is not listed in the policy addressing transfers that are not divestment. Less than fair market value means the compensation received in return for a resource was worth less than the fair market value of the resource. It is not divestment to transfer resources from the client to: (1) the client's spouse, or (2) another solely for the benefit of the client's spouse. 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 Department is to cancel a divestment penalty if either of the following occur before the penalty is in effect: (1) all the transferred resources are returned and retained by the individual, or (2) fair market value is paid for the resources. BEM 400 (1/1/2013) pages 1-12.

The Department determined that a divestment penalty would be applied for the \$ [REDACTED] that was given to family, mostly to the Claimant's daughter, over the last four years. The Department asserted that the one fifth interest in a home in Wisconsin the Claimant's spouse received in return was less than fair market value and did not

meet an exception for the transfer to not be considered a divestment. The Eligibility Specialist even sought policy clarification regarding cash being exchanged for another type of asset, specifically real property that is jointly owned. However, the Eligibility Specialist's testimony indicated she never verified the specifics of what name the one fifth interest in the home was put under on the deed. Additionally, there was no evidence that the Department attempted to verify if there was any willingness to sell by the joint owner(s) of the property.

The Claimant asserts that transfer was not divestment because the one fifth interest in the home in Wisconsin was for more than fair market value of the \$ [REDACTED] that was given to the Claimant's daughter and other family members. Specifically, that the one fifth interest in the home in Wisconsin had a value of \$ [REDACTED]. Further, the Claimant's spouse's one fifth interest in the home in Wisconsin was put into a trust solely for the benefit of the Claimant's spouse. The Claimant's son testified that the Claimant spouse was 88 years old when the trust was established. The Claimant's son also stated that if it was in the best interest of the Claimant's spouse, she would be given the money for her share of the property or the property would be sold. Accordingly, it was asserted that the Claimant's spouse has not lost any control over the resource, which was returned at more than fair market value.

It was not contested that the Claimant's spouse was given the one fifth interest in the property in Wisconsin in January 2013 as a repayment for the funds totaling \$ [REDACTED] given to the Claimant's daughter and other family members within the past 60 months. The December 22, 2012 Real Estate Payment Receipt documents an estimated fair market value of the home in Wisconsin of \$ [REDACTED] (Exhibit A page 27). Accordingly, the Claimant's spouse's one fifth interest in this property would have a fair market value of \$ [REDACTED]. This is greater than the \$ [REDACTED] given to the Claimant's daughter and other family members. BEM 405 is clear that divestment is a transfer of a resource by a client or his spouse for less than fair market value, but also that the Department is to cancel a divestment penalty if fair market value is paid for before the penalty is in effect. Further, BEM 405 also specifies that it is not divestment to transfer resources from the client to the client's spouse or another solely for the benefit of the client's spouse. On February 8, 2013, the Department determined that the trust is solely for the benefit of the Claimant's spouse, therefore the trust principal and income are non-countable for the purposes of determining the Claimant's eligibility. (Exhibit A, page 66)

In reviewing the email seeking policy clarification, the question asked did not indicate all of the relevant circumstances in this case. For example, the email indicated that the one fifth interest in the property was given to the Claimant and his spouse, rather than to the Claimant's spouse or to the trust solely for the benefit of the Claimant's spouse. Further, the information given with the question did not address whether or not there was a willingness to sell the property. It is noted that the emailed question cited an example from the BEM 405 policy that has a significantly different outcome when there is an agreement to sell. In the example, when there was a willingness to sell, only the portion of the property given away was considered transferred. Additionally, the circumstances in the BEM 405 policy example were a bit different than what occurred in

this case. In the example, the entire property was the resource and a portion of the equity was given away by the client. (Exhibit A, page 60; BEM 405) In this case, the resource was funds previously given away to the Claimant's daughter and other family members, which was repaid with an interest in a property to the Claimant's spouse that was for more than fair market value of the original resource and there is a willingness to sell if it is in the best interest of the Claimant's spouse.

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 applied a divestment penalty to the Claimant's Medicaid case.

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. Re-determine the Claimant's Medicaid eligibility retroactive to January 20 13 in accordance with Department policy.
2. Notify the Claimant/Claimant's Authorized Representative of the determination in accordance with Department policy.

/s/ _____
Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 30, 2013

Date Mailed: December 30, 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

CL/hj

cc:

