

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201320676
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: May 14, 2013
County: Manistee

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, a telephone hearing was held on May 14, 2013. Participants on behalf of Claimant included [REDACTED], authorized hearings representative, [REDACTED], [REDACTED] witness. Participants on behalf of Department of Human Services (DHS) included [REDACTED], ES; [REDACTED], FIM; and [REDACTED], [REDACTED]

ISSUE

Did the Department properly apply a divestment penalty from 11/1/12 to 1/10/13 consisting of \$4,064.00 which was a portion of a real estate sale?

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 1/11/11, Claimant was admitted to Long Term Care (LTC).
2. On 5/1/12, property that was exempt from the asset test was sold for \$ [REDACTED]
3. Subsequently counsel submitted evidence of having spent the proceeds on numerous items.
4. On 12/13/12, the Department issued a Notice of Divestment Penalty for 2 months and 10 days.

5. The Department determined that a [REDACTED] a [REDACTED] inch [REDACTED] and \$ [REDACTED] in furniture with a “customer pick-up” when the homestead was 58 miles from the seller of goods constituted divestments. No U- [REDACTED] or gas receipts were submitted.
6. The Department exempted \$ [REDACTED] as appropriately spent on behalf of Claimant.
7. Claimant resides in an [REDACTED] [REDACTED] in Manistee County.
8. The Department presented evidence that the Claimant has not visited her homestead and has only left the facility for hospital purposes since she was admitted.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

MA divestment policy is found in BAM Item 405. Asset policy is found in BAM Item 400. Under these policies, converting an asset from one form to another of equal value is not considered divestment. Policy indicates that most purchases are conversions. BAM Item 405 PA.

In this case, Claimant argues that the purchase of household goods should all be exempt. The Department argues that the purchase of a number of the household goods could not be construed reasonably as for the “sole benefit” of Claimant as required in BAM Item 405. After careful review of the substantial and credible evidence on the whole record, the undersigned Administrative Law Judge (ALJ) finds that under the DHS policy and procedure the divestment for the goods purchased totaling \$ [REDACTED] constitutes divestment. The purchases of the [REDACTED] and [REDACTED] for customer pick-up cannot be reasonable construed for Claimant’s benefit. There is no indication the Claimant ever benefitted from these items as she has never visited her homestead. The Department’s actions are upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department’s actions were correct.

Accordingly, the Department's actions are UPHELD

/s/
Janice G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 7/17/13

Date Mailed: 7/18/13

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error , or other obvious errors in the hearing decision that effect the substantial rights of the claimant;
 - the failure of the ALJ to address other relevant issues in the hearing decision

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

JGS/tb

cc:

