

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-20698
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: June 12, 2013
County: St. Clair

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 hearing. After due notice, a telephone hearing was conducted from Lansing, Michigan on Wednesday, June 12, 2013. Claimant's son-in-law, [REDACTED] appeared and testified. Eligibility Specialist [REDACTED] and Eligibility Specialist [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly imposed the Divestment penalty for the months of January, 2013, through March 21, 2013?

FINDINGS OF FACT

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

1. Claimant is a MA recipient and resides in a long-term care facility.
2. On December 19, 2011, the department received an MA application from Claimant's son-in-law.
3. Claimant was approved for Medicaid effective December 1, 2011.
4. During the look-back period, payments were made to relatives and non-relatives for various services and reimbursements.
5. At the Redetermination in November, 2012, the department considered these transfers a divestment resulting in the imposition of a divestment penalty period of 1/1/13 through 3/21/13, based on a divestment of \$ [REDACTED]

6. On December 12, 2012, the Department sent an Eligibility Notice to the Claimant/Representative which included notification of the divestment penalty.
7. On December 20, 2012, the Department received the Claimant/Representative's timely written request for hearing.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1). An opportunity for a hearing shall be granted to an applicant who requests a hearing because of a denial. MAC R 400.903(2).

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. BEM 105. Medicaid is also known as Medical Assistance ("MA"). *Id.* The Medicaid program is comprised of several categories; one category is for FIP recipients while another is for Supplemental Security Income ("SSI") recipients. *Id.* Programs for individuals not receiving FIP or SSI are based on eligibility factors in either the FIP or SSI program thus are categorized as either FIP-related or SSI-related. *Id.* To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formally blind or disabled. *Id.* FIP- and SSI-related Group 2 eligibility is possible even when net income exceeds the income limit because incurred medical expenses are considered. *Id.* Eligibility is determined on a calendar month basis. BEM 105. MA income eligibility exists for the calendar month tested when there is no excess income or allowable medical expenses that equal or exceed the excess income. BEM 545.

Divestment results in a penalty period in MA, not in eligibility. BEM 405. During the penalty period, MA will not pay for long-term care services. *Id.* Divestment means a transfer of a resource by a client (or spouse) that is within the look-back period and is transferred for less than fair market value ("FMV"). *Id.* Transferring a resource means

giving up all or partial ownership in, or rights to, a resource. *Id.* Resource means all the client's (and spouse's) assets and income. *Id.*; 20 CFR 416.1201. Less than FMV means the compensation received in return for a resource was worth less than the FMV of the resource. BEM 405. When a person gives up the right to receive income, the FMV is the total amount of income the person could have expected to receive. *Id.*

The first step in determining the period of time that transfers can be looked at for divestment is to determine the baseline date. BEM 405. The baseline date (applicable in this case) is the date which the client was an MA applicant and in a long-term care facility. *Id.* After the baseline date is established, the look-back period is established. BEM 405. The look-back period is 60 months for all transfers made after February 8, 2006 and 36 or 60 months (depending on the type of resource transferred) for transfers made on or before February 8, 2006. *Id.* Transfers made by anyone acting in place of, on behalf of, at the request of, or at the direction of the client/spouse during the look-back period are considered. *Id.*

In this case, payments were made to both relatives and non-relatives for various services and reimbursements. The parties did not dispute the baseline date of 12/19/11, or the look-back period.

| Payee | Date of Transfer | Amount of Transfer | Purpose |
|----------|------------------|--------------------|--------------------------------|
| Claimant | 11/21/11 | \$ [REDACTED] | Unknown |
| Claimant | 12/14/10 | \$ [REDACTED] | Unknown |
| Claimant | 11/24/08 | \$ [REDACTED] | Unknown |
| Relative | 12/6/11 | \$ [REDACTED] | Hearing Aids (3/12/12) |
| Relative | 11/14/11 | \$ [REDACTED] | Unknown |
| Relative | 1/23/12 | \$ [REDACTED] | Moving expenses paid to family |
| Relative | 2008-2012 | \$ [REDACTED] | Personal care paid to family |
| | | \$ [REDACTED] | |

The above transfers were to Claimant and relatives. The below listed expenses were submitted by Claimant's representative and verified by the department.

| Payee | Date of Transfer | Amount of Transfer | Purpose |
|--------------|------------------|--------------------|---------------------------------------|
| Non-relative | 11/30/11 | \$ [REDACTED] | Long term care facility |
| Non-relative | 12/27/11 | \$ [REDACTED] | Long term care facility |
| Non-relative | 12/27/11 | \$ [REDACTED] | Hairdresser at LTC |
| Non-relative | 12/20/11 | \$ [REDACTED] | Miscellaneous bills |
| Non-relative | 11/21/11 | \$ [REDACTED] | Renter's insurance |
| Non-relative | 11/14/12 | \$ [REDACTED] | Prescription expenses |
| Non-relative | 11/20/12 | \$ [REDACTED] | Rent [REDACTED] [REDACTED] [REDACTED] |
| | | \$ [REDACTED] | |

The above transfers for Claimant's healthcare, pharmacy, insurance, rent, and hair were for the sole benefit of Claimant and thus are not divestments. In reviewing the various asset transfers, the department found \$ [REDACTED] as divestment (\$ [REDACTED] - \$ [REDACTED] = \$ [REDACTED]).

Transfers for less than fair market value are presumed to be for eligibility purposes unless/until the client provides convincing evidence that they had no reason to believe long-term care (or waiver services) might be needed. *Id.* Converting an asset from one form to another of equal value is not divestment even if the new asset is exempt. *Id.* Payment of expenses such as one's own taxes or utility bills is not divestment. *Id.*

The Claimant/Representative asserts that the above transfers totaling \$18,960.80 should be considered Asset Conversions. An Asset Conversion applies when an asset is converted from one asset to another of equal value. Examples provided for in policy are:

- Using \$5,000 from savings to buy a used car priced at \$5,000
- Trading a boat worth about \$8,000 for a car worth about \$8,000

Claimant's representative contends that the \$ [REDACTED] transfer on 12/6/11 was used to buy hearing aids for Claimant. The hearing aids were purchased on 3/12/12 for \$ [REDACTED]. Here, the transfer was for less than fair market value. Transfers for less than fair market value are presumed to be for eligibility purposes, unless the client provides convincing evidence that they had no reason to believe long-term care (or waiver services) might be needed. BEM 405. Claimant entered long-term care on 10/21/11. Therefore, Claimant was already in long-term care at the time of the \$ [REDACTED] transfer. As a result, the \$ [REDACTED] transfer is a divestment.

On 1/23/12, \$1,282.94 was transferred to family for moving expenses. Relatives can be paid for providing services, however, if payment was not made at the time services were rendered, it is presumed the care was done for free. BEM 405. A client may rebut this presumption by providing tangible evidence that a payment obligation existed at the time the service was provided such as a signed written agreement. *Id.*; 20 CF R 416.1246(e) Such agreements, according to BEM 405, are considered to be a transfer for less than fair market value unless the compensation is in accordance with all of the following:

- The services must be performed **after** a written legal contract/agreement has been executed between the client and provider. The services are not paid for until the services have been provided. The contract/agreement must be dated and the signatures must be notarized.
- At the time of the receipt of the services, the client is not residing in a nursing facility, adult foster care home, institution for mental diseases, inpatient hospital, intermediate care facility for mentally retarded or eligible for home and community based waiver, home health or home help; **and**

- At the time the services are received, the services must have been recommended in writing and signed by the client's physician as necessary to prevent the transfer of the client to a residential care or nursing facility. Such services cannot include the provision of companionship; **and**
- DHS will verify the contract/agreement by reviewing the written instrument between the client and the provider which must show the type, frequency and duration of such services being provided to the client and the amount of consideration (money or property) being received by the provider, **or** in accordance with a service plan approved by DHS. If the amount paid for services is above fair market value, then the client will be considered to have transferred the asset for less than fair market value. If in question, fair market value of the services may be determined by consultation with an area business which provides such services; **and**
- The contract/agreement must be signed by the client or legally authorized representative, such as an agent under a power of attorney, guardian, or conservator. If the agreement is signed by a representative, that representative cannot be the provider or beneficiary of the contract/agreement.

Claimant's son-in-law and his two son's submitted typed receipts for their time spent packing and moving Claimant's belongings in the amount of \$ [REDACTED] with another receipt for \$ [REDACTED] for the U-haul rental and fuel. A contract dated 12/10/11 was also submitted, signed by Claimant, indicating she agreed to pay her daughter, son-in-law and sons to pack up and move her belongings.

However, while the contract signed by Claimant was prior to the services being completed, it was not notarized. In addition, Claimant was already residing in long-term care at the time the services were provided and the services were not recommended in writing by a physician. Therefore, the transfer for \$ [REDACTED] is a divestment because the services were not in accord with policy provision BEM 405.

This same reasoning applies to the \$ [REDACTED] transfer for personal care paid to Claimant's daughter. Here Claimant's daughter submitted a type written contract dated 1/3/09 notarized and signed by Claimant, requesting Claimant's daughter assist in her medical care at home, limited to bathing and foot care, for at least 10 hours a week at \$ [REDACTED] an hour. But this contract is not valid because the doctor's authorization was written after the services were performed and the contract did not state Claimant needed her daughter's services to keep her out of a nursing facility.

Claimant's daughter also submitted a second type written contract dated 11/11/12 that as an RN, she had assisted her mother with her personal care for the past 4 years, approximately 10 hours a month at an average rate of \$ [REDACTED] an hour for approximately \$ [REDACTED] a year, totaling \$ [REDACTED]. In addition, she helped with the moving and packing of Claimant's apartment for \$ [REDACTED]. Claimant's daughter signed the contract and it was notarized. However, the contract was not signed by Claimant, a doctor did

not recommend the services be performed in writing and the contract date was after the services were performed.

Relatives who provide assistance or services are presumed to do so for love and affection, and compensation for past assistance or services shall create a rebuttable presumption of a transfer for less than fair market value. The presumption has not been rebutted and as a result, the \$ [REDACTED] for personal care and \$ [REDACTED] for moving expenses are divestments because they are not in accord with policy BEM 405.

With the exception of transfers for the Claimant's healthcare, pharmacy, insurance, rent, and hair totaling \$ [REDACTED] it is not known what the remaining payments were for or whether the transfers were for the sole benefit of the Claimant. In light of the foregoing, it is found that the "unknown" transfers (\$ [REDACTED], \$ [REDACTED] and \$ [REDACTED] totaling \$ [REDACTED] are divestments, as well as the \$ [REDACTED] (the remainder of the \$ [REDACTED] - \$ [REDACTED] = \$ [REDACTED] while the \$ [REDACTED] in reimbursements for Claimant's transfers were for the Claimant's healthcare, pharmacy, insurance, rent, and hair are not.

The "unknown" reimbursements in the amount of \$ [REDACTED], \$ [REDACTED], \$ [REDACTED] and \$ [REDACTED] are divestments because it was not established that the transfers were indeed for the benefit of the Claimant. Additionally, caregiver costs are divestments in that there was no tangible evidence to establish that a payment obligation existed at the time the services (caregiver costs) was rendered. Once again, for the same reasons discussed above, Asset Conversion is not applicable.

Claimant/Representative contends that the funeral contract dated 11/7/11 for \$9,694.40 is a transfer to a funeral plan and not divestment. In accord with policy, placing money in an irrevocable prepaid funeral contract is not divestment. BEM 405.

Here, Claimant's annuity was cashed out on 11/21/11, for \$ [REDACTED]. In addition, two withdrawals from Claimant's checking account were on 11/14/11 for \$ [REDACTED] and on 12/6/11 for \$ [REDACTED]. Therefore, despite the funeral contract being certified by department as irrevocable, it was not considered an allowable expense because the funeral contract was purchased on 11/7/11, which was before the annuity was cashed out and the monies withdrawn from Claimant's checking account. As a result, the \$ [REDACTED] was money Claimant already had on hand and was not from the divested amount considered by the department.

Claimant/Representative also contends that an orthodontist bill for \$ [REDACTED] is a medical expense and not divestment. However, the date of service for the bill is 2/18/08, which was prior to the annuity disbursements of 11/24/08, 12/14/10 and 11/21/11 and therefore, cannot properly be considered and allowable expense.

Ultimately, as detailed above, because there was no written agreement or other convincing tangible evidence to establish that a payment obligation existed at the time the services were rendered between the Claimant and relatives, the \$ [REDACTED] in transfers are divestments.

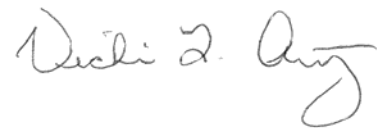
CONCLUSION

In this case, transfers were made to relatives and non-relatives for various reimbursements and services. As set forth above, some of the transfers are divestments while others are not. Ultimately, the Department established it acted in accordance with Department policy when it determined a divestment existed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, AFFIRMS the Department's determination. Accordingly, it is ORDERED:

1. The Department's determination that a divestment occurred is **AFFIRMED**.
2. The Department's divestment calculation and resulting divestment penalty period is **AFFIRMED**.
3. The Department shall impose the proper divestment penalty due to divestment transfers totaling \$ [REDACTED]
4. The Department shall notify the parties in writing of the divestment penalty.
5. The Department shall supplement for any lost benefits that Claimant was entitled to receive if otherwise eligible and qualified to receive in accordance with Department policy.



Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 3, 2013

Date Mailed: July 5, 2013

NOTICE: 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
Recons ideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

VLA/las

cc:

