

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-45152
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: July 25, 2013
County: Lapeer county DHS

ADMINISTRATIVE LAW JUDGE: Corey A. Arendt

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on July 25, 2013, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly determine the Claimant's eligibility for Medical Assistance (MA) benefits?

FINDINGS OF FACT

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

1. As of April 1, 2003, the Claimant had an ownership interest in a property located at [REDACTED]
2. During parts of 2012, the Claimant had an ownership interest in a property located at [REDACTED]
3. On September 6, 2012, the Claimant divested herself of her interest in the property located at [REDACTED]
4. On March 7, 2013, the Claimant applied for MA.
5. On or around April 1, 2013, the Claimant filed paperwork indicating she was entering long term care.
6. On April 23, 2013, the Department denied the Claimant's application for MA benefits citing the Claimant had excess assets for the MA program.

7. At the time of application for MA benefits, the Claimant only had an interest in the property located at [REDACTED]
8. On May 2, 2013, the Claimant requested a hearing to protest the MA denial.
9. Prior to the hearing, the Department approved the Claimant's MA application with a divestment period beginning April 1, 2013 and ending November 27, 2013.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The MA program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

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.

Assets must be considered in determining eligibility for FIP, SD A, RAPC, LIF, G2U, G2C, SSI-related MA categories, AMP and FAP. (BEM 400).

Assets means cash, any other personal property and real property. **Real property** is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. **Personal property** is any item subject to ownership that is **not** real property (examples: currency, savings accounts and vehicles). (BEM 400).

A homestead is where a person lives (unless Absent from Homestead, see below) that he owns, is buying or holds through a life estate or life lease. It includes the home, all adjoining land and any other buildings on the land. Adjoining land means land which is **not** completely separated from the home by land owned by someone else. Adjoining land may be separated by rivers, easements and public rights-of-way (example: utility lines and roads). (BEM 400).

Exclude the homestead the owner formerly lived in if the owner intends to return and is absent for one of the following reasons:

- Vocational rehabilitation training.
- Inability to live at home due to a verified health condition.
- Migratory farm work.
- Care in a hospital.
- Temporary absence due to employment, training for future employment, illness, or a casualty (example: fire) or natural disaster.

In the present case, the Department concluded the Claimant had excess income based upon the valuation of two different homes. However, at the time of application, the Claimant only had one home that was deeded in her name and therefore that home should have been excluded based upon policy. Therefore, I find the Department's original action to deny the application inappropriate.

Shortly after the denial, the Department re-examined the case and determined the Claimant was eligible but with a divestment period. Divestments result in penalty periods not ineligibility.

Divestments occur when there is a transfer of a resource by a claimant that is within the look back period and when the transfer is for less than fair market value. BEM 405.

In this case, the Claimant transferred her ownership interest in the Indiana property to her daughter for unspecified consideration. Because the consideration was not listed nor testified too, and because the Claimant has little to show for the transfer of interest, I find the transfer was for less than fair market value of the property.

Department policy does allow for transfers that are not considered divestments. BEM 405. For instance, one exception is where the property in question is jointly owned by the Claimant and another individual and the Claimant transfers his/her interest to the other individual and the Claimant can verify that the property transferred actually belonged solely to the person to whom it was transferred. BEM 405.

The above exception was pointed out by the Department witness and argued for by the Claimant's representative. The Claimant's representative argued all of the bills, upkeep and notes were paid by the representative and not the Claimant. This, however does not by itself indicate the Claimant lacked an interest in the property and therefore had no ownership/possession/interest in the property. Although these facts could all be true, if something were to have happened to the other owner, the Claimant would have been responsible for all of the costs of the property as well would have received all consideration for the property.

Further review of policy and of the evidence submitted does not reveal any other exceptions that would apply to this case.

That being said, the Department instituted a divestment period. The Department however did not provide any testimony regarding the divestment period and how they calculated the divestment period in question. Therefore, I was unable to determine whether or not the Department properly calculated the divestment period in relation to the appropriate policy.

Accordingly, I find evidence to reverse the Department.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did not act properly.

Accordingly, the Department's MA decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate a redetermination as to the claimant's eligibility for MA benefits beginning March 7, 2013 and issue retroactive benefits if otherwise eligible and qualified.



Corey A. Arendt
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: July 26, 2013

Date Mailed: July 26, 2013

NOTICE: 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)

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 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.

2013-45152/CAA

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

CAA/las

cc:

