

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2015-4
2013-61297
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: October 23, 2014
County: Bay

ADMINISTRATIVE LAW JUDGE: Kevin Scully

DECISION AFTER REHEARING

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, MCL 400.37, and Mich Admin Code Rule 400.919 and an Order Granting Rehearing that was generated after review of Claimant's request for rehearing/reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on September 18, 2013. The date for a new hearing having been assigned and due notice having been provided, a telephone hearing was conducted from Lansing, Michigan, on October 23, 2014. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [REDACTED].

ISSUE

Whether the Department of Human Services (Department) properly determined the length of a divestment penalty that would apply towards the Claimant's Medical Assistance (MA)?

FINDINGS OF FACT

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

1. Findings of Fact 1-11 from the Hearing Decision mailed September 19, 2013, are incorporated by reference.
2. The Department determined the amount of transfer without considering a lien on the properly.
3. The Michigan Administrative Hearing System (MAHS) received the Claimant's request for a rehearing/reconsideration on October 19, 2014.
4. The Michigan Administrative Hearing System (MAHS) granted a re-hearing on September 22, 2014.

CONCLUSIONS OF LAW

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.

Divestment means a transfer of a resource by a client or his spouse that are within a specified time for less than fair market value that are not excluded by Department policy. Department of Human Services Bridges Eligibility Manual (BEM) 405 (July 1, 2013), pp 1-22.

The penalty period is computed on the total uncompensated value of all resources divested. The Department will determine the uncompensated value for each resource transferred and combine into a total uncompensated value. The Department will divide the total uncompensated value by the average monthly private Long Term Care (LTC) cost in Michigan for the client's baseline date. This gives the number of full months for the penalty period. The Department will multiply the fraction remaining by 30 to determine the number of days for the penalty period in the remaining partial month. BEM 405.

The uncompensated value of a divested resource is:

- The resource's cash or equity value.
- Minus any compensation received.
- The uncompensated value of a promissory note, loan, or mortgage is the outstanding balance due on the "Baseline Date." BEM 405.

If a past unreported divestment is discovered or an agency error is made which should result in a penalty, a penalty must be determined under the policy in place at the time of discovery. If a penalty is determined for an unreported transfer in the past, apply the penalty from the first day after timely notice is given. BEM 405.

In this case, the Claimant applied for Medical Assistance (MA) and requested long term benefits. The Claimant's application was approved by the Department. Later, the Department conducted a routine audit of the Claimant's case, and it was discovered that the Claimant has transferred her interest in real estate to another person, and that his transfer had not been considered when determining her eligibility for Long Term Care (LTC).

On June 17, 2013, the Department notified the Claimant that a divestment penalty would apply from July 1, 2013, through November 2, 2013. The Claimant requested a hearing protesting the divestment penalty on June 28, 2013, and a hearing was conducted on September 18, 2013. The Michigan Administrative Hearing System (MAHS) upheld the Department in a decision and order mailed September 19, 2013.

On September 16, 2014, the Michigan Administrative Hearing System (MAHS) granted a re-hearing at the Claimant's request.

The Claimant does not dispute that a divestment took place, but argued that the Department failed to consider a lien against the property when determining the amount of divestment that had taken place.

The Department did not dispute that the lien in question was not applied towards its determination of the divestment penalty.

This Administrative Law Judge finds that Department policy requires that a divestment amount is to be determined from the equity value of the transferred resource. A determination of the equity value must include any valid liens against the resource that would limit the countable value of the transferred property. Since the Department did not consider the lien on the Claimant's property in this case, the Department failed to properly determine the length of the divestment penalty.

DECISION AND ORDER

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 determined the divestment penalty against the Claimant's Medical Assistance (MA) benefits.

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. Initiate a determination of the Claimant's Medical Assistance (MA) eligibility and whether a divestment penalty should apply to these circumstances.
2. If a divestment penalty is required, adjust the dates of the divestment penalty in accordance with Department policy.

3. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.



Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: October 31, 2014

Date Mailed: October 31, 2014

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.

KS/las

cc:

