

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-63550
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: October 9, 2013
County: Wayne DHS (82)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 October 9, 2013, from Detroit, Michigan. Participants included [REDACTED] as Claimant's guardian. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Specialist, and [REDACTED], Supervisor.

ISSUE

The issue is whether DHS properly imposed a divestment penalty following transfer of Claimant's homestead.

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 was an ongoing MA benefit recipient.
2. Claimant was a homeowner.
3. Claimant had a guardian.
4. On [REDACTED]/13, Claimant entered a nursing home.
5. On an unspecified date, Claimant's guardian quit-claimed Claimant's homestead into her name.

6. Claimant's homestead was valued to be \$42,000.
7. On [REDACTED]/13, DHS assessed a divestment penalty against Claimant for the transfer of Claimant's homestead.
8. The divestment penalty was for the period of [REDACTED]/13-[REDACTED]/13
9. On [REDACTED]/13, Claimant's guardian requested a hearing to dispute the divestment penalty.

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

Claimant's guardian requested a hearing to dispute a divestment penalty imposed by DHS against Claimant for the period of 7/1/13-10/27/13. It was not disputed that the divestment penalty was based on allegedly divested assets related to the transfer of Claimant's homestead.

Divestment is a type of transfer of a resource and not an amount of resources transferred. BEM 405 (5/2013), p. 1. Divestment results in a penalty period, not MA program ineligibility. *Id.* During the penalty period, MA will not pay the client's cost for: long-term-care (LTC) services, home and community-based services, home help or home health. *Id.* MA will pay for other MA-covered services. *Id.*

The present case involves Claimant's homestead. DHS is to exclude one homestead for an asset group. BEM 400 (7/2013), p. 25. Thus, Claimant's homestead is an exempt asset for purposes of MA benefit eligibility.

It should be considered whether DHS could assess a divestment penalty for an exempt asset. Divestment often involves clients that give away non-exempt assets with the intention of becoming Medicaid eligible; there is no such incentive to give away assets that DHS does not count in an asset determination.

Transfers of resources that are excluded or not countable assets under SSI-related MA policy may be divestment. BEM 405 (5/2013), p. 7. Transfer of the following may be divestment:

- Homestead of L/H and waiver client (see BEM 106) or the L/H and waiver client's spouse even if the transfer occurred before the client was institutionalized or approved for the waiver.
- Assets that were **not** countable because they were unavailable or **not** salable.
Id.

The above policy verifies that DHS may impose a divestment penalty even for assets that are exempt from an asset determination. Thus, a divestment analysis may proceed.

DHS defines divestment as a transfer of a resource by a client or spouse that:

- is within a specified time; and
- is a transfer for less than fair market value; and
- is not listed below under "TRANSFERS THAT ARE NOT DIVESTMENT". BEM 405 (4/2012), p. 1.

The first step in determining whether the asset transfer qualifies as divestment is determining the baseline date. *Id.* A person's baseline date is the first date that the client was eligible for Medicaid and one of the following: in long-term care, approved for the waiver, eligible for home help services or eligible for home health services. *Id.* at 5. Transfers that occur on or after a client's baseline date must be considered for divestment. *Id.* Once the baseline date is determined, the look-back period is determined. *Id.* The look back period is 60 months prior to the baseline date for all transfers made after February 8, 2006. *Id.*

There was no dispute that Claimant's guardian quit-claimed the house either shortly before or shortly after Claimant's long-term care began. Thus, the date is within a timeframe that allows for a divestment penalty.

The second step of the divestment analysis considers whether the transfer was made for less than fair market value. 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. *Id.*, p. 5. That is, the amount received for the resource was less than what would have been received if the resource was offered in the open market and in an arm's length transaction. *Id.*

It was not disputed that Claimant's guardian transferred Claimant's home into her own name without paying any monetary compensation. Claimant's guardian alleged that she was Claimant's long-time provider and that the transfer reflected compensation for the guardian's services and numerous out-of-pocket expenses.

Relatives can be paid for providing services; however, DHS is to assume services were provided for free when no payment was made at the time services were provided. *Id.* A client can rebut this presumption by providing tangible evidence that a payment obligation existed at the time the service was provided (for example a written agreement signed at the time services were first provided). *Id.*

Claimant's guardian failed to present any evidence of an agreement between herself and Claimant concerning the guardian's reimbursement of expenses. Claimant's guardian also failed to present receipts for her expenses or as payments for her work. Based on the presented evidence, it is found that the transfer of Claimant's homestead was for less than fair market value.

The third requirement for divestment is that the transfer of assets not be listed under a DHS regulation section entitled, "Transfers that are not divestment". Transfers that are not divestments are: transferring excluded income, transfers involving spouse, transfers involving child, transfers to funeral plan, transfer to trust, purchase of funeral contract, asset conversion, transferring homestead to family, transfer for another purpose and trustee fees. *Id.*, pp. 7-9. The transfer of Claimant's homestead to her guardian does not appear to meet any of the possible transfers that are not divestment except for a transfer for another purpose.


Transfers exclusively for a purpose other than to qualify or remain eligible for MA are not divestment. *Id.*, p. 9. That the asset or income is not counted for Medicaid does not make its transfer for another purpose. *Id.*

Claimant's guardian alleged that the transfer of Claimant's home was not made for the purpose of qualify or remaining MA benefit eligible. Claimant's guardian's testimony seemed credible, but there was no corroborating evidence to justify accepting the testimony as fact. As noted in the second step of the analysis, Claimant's guardian failed to provide an employment contract or receipts verifying that the transfer of Claimant's homestead was made for a reason other than divestment.

The duration of the divestment penalty was not disputed. Based on the presented evidence, it is found that DHS properly imposed a divestment penalty against Claimant for the transfer of her homestead.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly imposed a divestment penalty against Claimant for the period of [REDACTED]/13-[REDACTED]7/13. The actions taken by DHS are **AFFIRMED**.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 10/28/2013

Date Mailed: 10/28/2013

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

CG/hw

cc:

