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

IN THE MATTER OF:



Reg. No.: 201413757

Issue No(s).: 2008 Case No.:

Hearing Date: January 16, 2014

County: Branch

ADMINISTRATIVE LAW JUDGE: MICHAEL S. NEWELL

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 t elephone hearing was held on January 1 6, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Participants on behalf of the Department of Human Servic es (Department) included E.S.

<u>ISSUE</u>

Did the Department properly apply the divestment period at issue?

FINDINGS OF FACT

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

- 1. The material facts of this case are undisputed.
- 2. On January 4, 2012, Claim ant withdrew money from his bank account, of which are not accounted for and cannot be accounted for.
- In June 2012, Claimant entered assisted living and paid for his care expenses from his personal assets
- 4. On September 16, 2013, Claimant applied for long-term care.
- 5. On October 21, 2013, the Department i ssued a Notic e of Case Action approving Claimant effective September 1, 2013 with a co-pay of \$ but subject to divestment penalty from S eptember 1, 2013 through November 30, 2013 due to the unaccounted for \$
- 6. On November 19, 2013, Claimant requested hearing.

7. At the time of the hear ing, none of Claimant's fa mily members knew what happened with the money, and Claimant had not been in a condition to provide such information for some time.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Service s Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), D epartment of Human Service es Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Medic al Assistance (MA) program is est ablished by the Title XIX of the Socia I 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.

Additionally, BEM 405 requires the Department to apply a I ook back divest ment period for Claimant's because he is MA eligible and was in a long-term care facility at the time of application. There is no dispute that the wit hdrawal occurred within the look back period, and it did occur during the look back period. See BEM 405 page 5. Without any explanation for the withdrawal, the transfer is presumed a divestment. The Department applied a divestment period of three months. BEM 405 p 12 authorizes a divestment to period of 3.5 months in this case.

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 acted in accordance with Department policy when it applied the divestment period at issue.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

Michael S. Newell

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

Michael &. Newell

Date Signed: February 7, 2014

Date Mailed: February 7, 2014

NOTICE OF APP EAL: The claimant may appea I the Dec ision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, i f a timely Request for Rehearing or Reconsiderati on was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing S ystem (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order. MAHS will not order a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 or iginal 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 clai mant must specify all reas ons 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

MSN/las

CC:

