

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

IN THE MATTER OF:



Reg. No.: 201418862
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: February 5, 2014
County: Marquette County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 February 5, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] [REDACTED] [REDACTED] [REDACTED] as power of attorney for the Claimant, and [REDACTED] [REDACTED] as attorney-at-law for the Claimant. Participants on behalf of the Department of Human Services (Department) included Pamela Ehnis, [REDACTED] [REDACTED] and Assistant Attorney General [REDACTED] [REDACTED].

ISSUE

Whether the Department of Human Services (Department) properly determined that the Claimant made a divestment subjecting her eligibility for Medical Assistance (M.A.) eligibility to a divestment penalty?

FINDINGS OF FACT

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

1. The Claimant is a Medical Assistance (M.A.) recipient.
2. The Claimant sold a Chevy Impala for \$ [REDACTED] in December of 2010.
3. In December of 2010, the Claimant purchased a Chevrolet pick up truck with Richard Laforest as co-owner.
4. On October 20, 2013, the Claimant purchased appliances for \$ [REDACTED] to be used in her primary residence.
5. On November 13, 2013, the Department determined that the Claimant's Medical Assistance (M.A.) would be subject to a divestment penalty from October 1, 2013, through November 30, 2013.

6. The Department received the Claimant's request for a hearing on February 5, 2014, protesting 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.

Divestment means a transfer of a resource by a client or his spouse that are all of the following:

- Is within a specified time;
- Is a transfer for less than fair market value;
- Is not listed below under transfers that are not divestment

Divestment is a type of transfer of a resource and not an amount of resources transferred. Divestment results in a penalty period in Medical Assistance (M.A.), not ineligibility.

During the penalty period, Medical Assistance (M.A.) will not pay the client's cost for:

- Long term care (LTC) services.
- Home and community-based services.
- Home Help.
- Home Health.

MA will pay for other Medical Assistance (M.A.) covered services. Department of Human Services Bridges Eligibility Manual (BEM) 405 (October 1, 2013), pp 1-22.

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. Not all transfers are divestment. When a Medical Assistance (M.A.) recipient jointly owns a resource with another person, any action by one of the owners that reduces or eliminates ownership or control of the Medical Assistance (M.A.) recipient is considered a transfer and may result in divestment. BEM 405.

Divestment occurs when there is a transfer that falls within 60 months before the first date that a person becomes eligible for Medical Assistance (M.A.) in long term care (LTC), or is eligible for home based services. BEM 405.

Converting an asset from one form to another of equal value is not divestment even if the new asset is exempt. Most purchases are conversions. BEM 405.

A homestead is where a person lives that they own, unless that person is absent from the homestead because she is in a long term care facility. A person's homestead and household goods are considered exempt assets. A Medical Assistance (M.A.) recipient may exempt one motorized vehicle from countable assets. Department of Human Services Bridges Eligibility Manual (BEM) 400 (October 1, 2013), pp 31-37.

In this case, the Claimant is a Medical Assistance (M.A.) recipient and has been admitted to a long term care (LTC) facility. In December of 2010, the Claimant sold her Chevy Impala for \$12,000. In December of 2010, the Claimant purchased a Chevrolet pickup truck with Richard Laforest as co-owner. On October 20, 2013, the Claimant purchases appliances for \$3,320.92 to be used in her primary residence.

It was not disputed during the hearing that these transactions took place within the 60 month period where a divestment would be relevant to the Claimant's Medical Assistance (M.A.).

On November 13, 2013, the Department determined that the purchase of the Chevrolet pickup truck and the purchases of appliances on October 20, 2013, were divestments resulting in a two month divestment penalty from October 1, 2013, through November 30, 2013.

It was not disputed during the hearing that the Claimant is eligible for Medical Assistance (M.A.) based on her countable assets.

It was not disputed during the hearing that the sale of the Chevy Impala for \$12,000 in December of 2010, was a transfer for fair market value, and that this transfer was not considered a divestment.

Neither the fair market value of the transactions the Department used to determine the divestment penalty, nor the calculation of the divestment penalty period were disputed during the hearing.

The Assistant Attorney General argued that the purchase of the pickup truck and the appliances were divestments. Department policy considers most purchases to conversions and the Department determined that in making these purchases, the Claimant was giving up control over her assets to another person because she could not make use of the assets herself.

This Administrative Law Judge finds that the purchase of the pickup truck and the appliances were not divestments. The Chevy Impala was an exempt asset, and the use of the proceeds of that sale to purchase the Claimant's sole motorized vehicle (the pickup truck) and some household goods for use in her primary residence were a conversion of one exempt asset into another exempt asset. Divestments are determined based on a person's ownership and right to control. How much a person is making use of an asset is not a controlling factor listed in BEM 405.

The Assistant Attorney General cited *Mackey v Department of Human Services*, 289 MichApp 688,808 NW2d 484 (2010) as authority for determining that the Department had properly found divestment in this case. In *Mackey*, a Medical Assistance (M.A.) applicant had transferred countable assets to a Limited Liability Corporation (LLC)

under the control of a daughter where further transfer of assets was not permitted without the daughter's consent. This Administrative Law Judge finds this case not to be persuasive in this case.

The Claimant provided the Department with a notarized affidavit as verification of her ownership and control of the pickup truck as a joint owner. No evidence was presented to indicate that the Claimant does not have an ownership interest in the pickup truck or the home appliances other than allegations that she is unable to make use of them.

Therefore, this Administrative Law Judge finds that the Department has failed to establish that it properly determined that the Claimant's Medical Assistance (M.A.) benefits should be subjected to a 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 applied a divestment penalty to the Claimant's Medical Assistance (M.A.) benefits from October 1, 2013, through November 30, 2013.

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 eligibility for Medical Assistance (M.A.) as of October 1, 2013.
2. Provide the Claimant with a Notice of Case Action (DHS-16 05) describing the Department's revised eligibility determination.
3. Issue the Claimant any retroactive benefits she may be eligible to receive, if any.

Kevin


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

Date Signed: February 18, 2014

Date Mailed: February 18, 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.

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

KS/hj

cc:

