

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

IN THE MATTER OF:



Reg. No.: 2013-65240
2013-45152 REHD/RECON
Issue Nos.: 2010
Case No.: [REDACTED]
Hearing Date: July 25, 2013
County: Lapeer

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Administrative Law Judge pursuant to Claimant's authorized representative's timely Request for Rehearing/Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge ("ALJ") at the conclusion of the hearing conducted on July 25, 2013, and mailed on July 26, 2013, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs at issue, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Reconsideration was generated on April 8, 2014.

ISSUE

Did the Administrative Law Judge (ALJ) err in reversing the Department's approval of Claimant's March 7, 2013 application for Medical Assistance (MA) benefits subject to the imposition of a divestment penalty for the time period April 1, 2013 through November 27, 2013?

FINDINGS OF FACT

Upon a review of the entire hearing record, including the recorded testimony and evidence admitted, in addition to a review of the applicable law and policy governing the issues in this matter, this Administrative Law Judge makes the following findings of fact:

1. On September 6, 2012, Claimant transferred by quitclaim deed to her daughter, [REDACTED], all right, title, and interest held by Claimant in property located at [REDACTED] and valued at \$ [REDACTED]
2. On March 7, 2013, Claimant's daughter and authorized representative, [REDACTED], submitted an assistance application (DHS-1171) for MA benefits on Claimant's behalf.
3. On April 23, 2013, the Department mailed Claimant a Notice of Case Action (DHS 1605), informing Claimant that her application for MA benefits had been denied effective March 1, 2013 due to Claimant's countable assets exceeding the asset limit for the MA program. Specifically, the Department concluded that Claimant's Tennessee property valued at \$ [REDACTED] and thus assigned a state equalized value of \$ [REDACTED] exceeded the \$2,000 asset limit for the MA program.
4. On May 2, 2013, Claimant's authorized representative submitted a hearing request on Claimant's behalf, protesting the department's denial of Claimant's application for MA benefits based on excess assets.
5. At the May 2, 2013 prehearing conference, the Department determined that its April 23, 2013 denial of Claimant's MA application based on excess assets was erroneous where Claimant had transferred the [REDACTED] Tennessee property to her daughter on September 6, 2012. The Department therefore approved Claimant's March 7, 2013 MA application but concluded that Claimant's September 6, 2012 transfer of her interest in the [REDACTED] Tennessee property was subject to the imposition of a divestment penalty for the time period April 1, 2013 through November 27, 2013.
6. On July 23, 2013, Claimant's authorized representative provided the Department with the following verifications to demonstrate that the [REDACTED] Tennessee property was solely owned and maintained by Claimant's daughter: [REDACTED] bills and paid check receipts; [REDACTED] information; copy of earnest money check; paid taxes 2000 to present; City of [REDACTED] water/sewer bills and paid check receipts; affidavit from [REDACTED]
7. At the July 25, 2013 hearing, the Department's representative stipulated that the verifications submitted to the Department by Claimant's authorized representative on July 23, 2013 established that the [REDACTED] Tennessee property had been solely owned by Claimant's daughter, who shared with Claimant an interest in the property prior to Claimant's September 6, 2012 transfer of her interest to Claimant's daughter.

CONCLUSIONS OF LAW

The MA program was established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The department administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies for the MA program are contained in the Bridges Administrative

Manual (BAM), the Bridges Eligibility Manual (BEM), the Bridges Reference Manual (BRM), and the Reference Tables Manual (RFT).

Department policy provides that an eligible Medicaid recipient may not possess in excess of \$2000 in assets. BEM 400 (July 1, 2013). Assets are defined as 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, p. 1.

Countable assets cannot exceed the applicable asset limit, however not all assets are counted. An asset is countable if it meets the availability tests and is not excluded. An asset is "available" if someone in the asset group has the right to use or dispose of the asset. BEM 400, p. 5. All types of assets are considered for SSI-related MA.

Department policy further provides that a divestment will result in a penalty period in MA, not ineligibility. BEM 405 (April 1, 2011). A divestment is a type of transfer of a resource by a client or his/her spouse that is all of the following: (1) within a specified time (ie. a look-back period); (2) a transfer for less than fair market value; and (3) not excluded by policy as a transfer that is not a divestment. BEM 405.

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. Not all transfers constitute divestments. Examples of transfers include:

- Selling an asset for fair market value (not divestment);
- Giving an asset away (divestment);
- Refusing an inheritance (divestment);
- Payments from a Medicaid trust that are not to, or for the benefit of, the person or his spouse; see BEM 401 (divestment);
- Putting assets or income in a trust;
- Giving up the right to receive income such as having pension payments made to someone else (divestment);
- Giving away a lump sum or accumulated benefit (divestment);
- Purchasing an annuity that is not actuarially sound (divestment);
- Giving away a vehicle (divestment); and
- Putting assets or income into a Limited Liability Company (LLC). BEM 405, p. 2.

When a client jointly owns a resource with another person(s), any action by the client or by another owner that reduces or eliminates the client's ownership or control is considered a transfer by the client. BEM 405. However, no penalty is imposed if the

parties involved verify that the resource transferred actually belonged solely to the person to whom it was transferred. BEM 405.

In the instant case, the Department initially denied Claimant's March 7, 2013 MA application due to excess assets. However, the Department subsequently concluded that this denial was erroneous where Claimant had on September 6, 2012 transferred to her daughter her interest in the [REDACTED] Tennessee property that was the subject of the Department's excess asset determination. The Department therefore approved Claimant's March 7, 2013 MA application but concluded that Claimant's September 6, 2012 transfer of her interest in the [REDACTED] Tennessee property was subject to the imposition of a divestment penalty for the time period April 1, 2013 through November 27, 2013.

Following a hearing requested by Claimant's authorized representative, the ALJ concluded as follows:

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 (at [REDACTED], [REDACTED] [REDACTED]) 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 (at [REDACTED], [REDACTED]) to her daughter for unspecified consideration. Because the consideration was not listed nor testified to, 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 Claimants 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.

In support of her reconsideration/rehearing request, Claimant's authorized representative asserts that the ALJ failed to consider relevant evidence submitted by Claimant to the Department regarding the [REDACTED] Tennessee property (mortgage, tax documents, utility bills, home improvement costs, homeowner's insurance receipts) establishing that it actually belonged solely to Claimant's daughter at the time of Claimant's September 6, 2012 transfer of her interest in the property to her daughter. As a result, Claimant's authorized representative argues that the ALJ's failure to consider this evidence as well as the ALJ's misapplication of Department policy led to an erroneous hearing decision.

After a careful review of the case file, exhibits and testimony in this matter, it must be noted at the outset that, in both the Findings of Fact portion and Conclusions of Law portion of the Hearing Decision, the ALJ erroneously referenced Claimant's September 6, 2012 transfer of a property located at [REDACTED] when the evidence admitted into the record, specifically Department Exhibit A, p. 11, clearly established that Claimant transferred by quit claim deed on September 6, 2012 a property located at [REDACTED]. It is also clear, following a review of the record, that the ALJ improperly disregarded Claimant's evidence provided to the Department in advance of the hearing regarding the [REDACTED] Tennessee property (mortgage, tax documents, utility bills, home improvement costs, homeowner's insurance receipts) – which evidence established, as acknowledged by the Department's hearing representative, that it actually belonged solely to Claimant's daughter at the time of Claimant's September 6, 2012 transfer of her interest in the property to her daughter. Consequently, the Department did not act in accordance with Department policy when it approved Claimant's MA March 7, 2013 MA application subject to the imposition of a divestment penalty for the time period April 1, 2013 through November 27, 2013 because, according to BEM 405, no penalty should have been imposed where Claimant and Claimant's daughter sufficiently verified that the

██████████ Tennessee property actually belonged solely to Claimant's daughter at the time of its transfer.

In light of the foregoing, it is found that the Administrative Law Judge erred by failing to consider relevant testimony and evidence, by applying the incorrect legal analysis to determine whether the Department's action was proper, and by failing to require the Department to approve Claimant's March 7, 2013 MA application effective March 1, 2013 absent a divestment penalty and award Claimant any supplemental MA benefits to which she is entitled.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Administrative Law Judge erred by failing to consider relevant testimony and evidence, by applying the incorrect legal analysis to determine whether the Department's action was proper, and by failing to require the Department to approve Claimant's March 7, 2013 MA application effective March 1, 2013 absent a divestment penalty. Accordingly, it is ordered that the decision of the Administrative Law Judge generated at the conclusion of the hearing conducted on July 25, 2013, and mailed on July 26, 2013, is VACATED and the action taken by the Department is **REVERSED** for the reasons contained herein.

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

1. Approve Claimant's March 7, 2013 MA application effective March 1, 2013.
2. Remove the divestment penalty previously imposed on Claimant's MA eligibility for the time period April 1, 2013 through November 27, 2013.
3. Issue Claimant any retroactive MA benefits to which she is entitled.

/s/ _____
Suzanne D. Sonneborn
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 9, 2014

Date Mailed: April 9, 2014

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NOTICE: The law provides that within 30 days of receipt of this decision, the claimant may appeal this decision to the circuit court for the county in which he/she lives.

KHS/las

cc:

