

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-25543
Issue No(s): 2008
Case No.: [REDACTED]
Hearing Date: March 4, 2014
County: Saginaw

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 telephone hearing was held on March 4, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], [REDACTED], and [REDACTED] Attorney. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist .

ISSUE

Did the Department properly apply the divestment period?

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 applied for Medicaid on September 26, 2013.
2. On November 22, 2013, the Department issued a Notice of Case Action granting Claimant Medicaid but subjecting her to a divestment period from September 1, 2013 through April 5, 2013.
3. The Department received Claimant's hearing request on December 4, 2013.
4. On February 17, 2013.
5. Claimant transferred a vacant lot by quit claim deed to [REDACTED] and [REDACTED] in consideration of \$0.00. (Exhibit 1).
6. The quit claim deed was for tax ID [REDACTED], which is the vacant lot. (See Exhibit 2).

7. Claimant's house was adjacent to the vacant lot and was tax ID [REDACTED]-[REDACTED] (See Exhibit 2).
8. The Saginaw Area GIS authority valued the SEV for the vacant lot at \$ [REDACTED] as of February 22, 2013.
9. The Saginaw Area GIS authority valued the SEV for the lot with the home and the home at \$ [REDACTED] as of February 22, 2013.
10. The parties stipulated that SEV represents one half of the tax assessor's determination of fair market value.
11. As of the date of the hearing, neither Claimant, [REDACTED], nor [REDACTED] had challenged any tax assessments for the properties for any years relevant.
12. The house was not listed for sale before the sale at issue, nor were real estate professionals consulted before the transfers regarding the value of the property.
13. The home has never been condemned or ruled no habitable.
14. On March 16, 2013, [REDACTED], Claimant's granddaughter, wrote Claimant a check for \$ [REDACTED] for the house, and wrote "house" on the subject line.
15. The Department determined that Claimant had a divestment amount of \$ [REDACTED] by multiplying the SEV by 2 and subtracting \$ [REDACTED] from the purchase price.

CONCLUSIONS OF LAW

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

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.

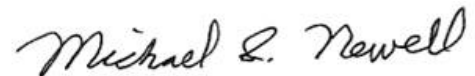
Additionally, the Department followed policy in issuing the decision and issued the decision based on the best available information, namely, the SEV. The tax assessments have never been challenged at any time relevant. The sale at issue was not through a listing but sold directly to Claimant's granddaughter. These were not arms lengths transactions. The transfers were for less than fair market value and thus subject to divestment (See BEM 401, pp 1, 6).

The best available information regarding the value of the properties in the record is the tax assessment. Claimant did not present an appraisal report or any comparable sales reports. Nothing in the record suggest that a tax assessment of true cash value represents the value of the property less repairs, or, put another, the home in perfect condition. The home was taxed as residential property and presumed habitable because it was never condemned or found otherwise. The Administrative Law Judge is not a real estate appraiser and is not qualified to assess real estate value based on the information presented during the hearing, including pictures of the property and repair estimates. Any finding of fact regarding the property's value would be speculative, and the ALJ lacks equitable powers.

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 subject Claimant to a divestment period.

DECISION AND ORDER

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



Michael S. Newell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 27, 2014

Date Mailed: March 27, 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

MSN/las

cc:

