

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-001723
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: June 12, 2014
County: WAYNE-DISTRICT 82 (ADULT MEDICAL)

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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 June 12, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant's Authorized Hearing Representative, [REDACTED], as well as [REDACTED], [REDACTED] and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], ES, and [REDACTED], APS.

ISSUE

Did the Department properly impose a Medical Assistance (MA) penalty period due to transferring of assets for less than fair market value?

FINDINGS OF FACT

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

1. On [REDACTED], Claimant's nephew received an estimate of \$63,480.00 to bring Claimant's homestead up to state and local building codes. (Exhibit 7)
2. On [REDACTED], Claimant sold her homestead for \$26,500.00. (Exhibit 4)
3. On [REDACTED], Claimant applied for MA. (Hearing Summary)
4. On [REDACTED], the Department issued a Verification Checklist (VCL), requesting verification of sold assets prior to the sale and at time of sale, with a due date of [REDACTED]. (Exhibit 3)

5. On [REDACTED], the Department received a copy of the sale of Claimant's homestead and verification of the sale of Claimant's interest of property. (Exhibit 4)
6. [REDACTED] the Department notified Claimant that Medicaid would not pay for her long-term care and home and community-based waiver services from [REDACTED] through [REDACTED] because of a transfer of assets for less than fair market value. (Exhibit 1)
7. On [REDACTED], Claimant requested a hearing.

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 Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, undisputed testimony indicated that Claimant sold her homestead in January of 2014. Per BEM 400 (12/13), pp. 31, 32, homesteads are excluded from being counted as assets in determining MA eligibility.

BEM 405 (10/2013), pp. 1, 11 instructs:

Divestment results in a penalty period in MA, **not** ineligibility. Divestment policy does **not** apply to Qualified Working Individuals; see BEM 169.

Divestment is a type of transfer of a resource and not an amount of resources transferred.

Divestment means a transfer of a resource (see RESOURCE DEFINED below and in glossary) by a client or his spouse that are all of the following:

Is within a specified time; see LOOK-BACK PERIOD in this item.

Is a transfer for LESS THAN FAIR MARKET VALUE; see definition in glossary: (The amount of money the owner would receive in the local area for his asset (or his interest in

an asset) if the asset (or his interest in the asset) was sold on short notice, possibly without the opportunity to realize the full potential of the investment. That is, what the owner would receive and a buyer be willing to pay on the open market and in an arm length transaction.)

Is not listed below under TRANSFERS THAT ARE NOT DIVESTMENT

Note: See Annuity Not Actuarially Sound and Joint Owners and Transfers below and BEM 401 about special transactions considered transfers for less than fair market value. (p. 1)

As explained below, transfers exclusively for a purpose other than to qualify or remain eligible for MA are **not** divestment. (p. 11)

Undisputed testimony indicated that Claimant sold her homestead to pay for expenses, including nursing home costs. It is likely that the homestead sale was made for purposes other than to qualify for MA, as Claimant could have simply not sold the homestead and the homestead would not have been counted as an asset in determining eligibility for MA.

In addition, the Department presented a [REDACTED] estimate of the homestead and used a tax assessment value (not a state equalized value) found in [REDACTED] doubled that figure and determined the value to be \$83,768.00. Claimant presented undisputed and convincing evidence that the homestead value at the time of the sale was not \$83,768.00, as just to bring the homestead up to code would have cost \$63,480.00. Therefore, the sale price of \$26,500.00 was not below fair market value.

Based on the above discussion, it is concluded that the sale of Claimant's homestead was not a divestment.

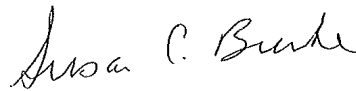
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it imposed a penalty for transferring assets for less than fair market value.

DECISION AND ORDER

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. Remove the penalty imposed in determining MA eligibility months.
2. Notify Claimant in writing of the corrected MA eligibility month(s).



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

Date Signed: **6/27/2014**

Date Mailed: **6/27/2014**

SCB / hw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

cc:

