

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

IN THE MATTER OF:



Reg. No.: 2014-21241
Issue No(s): 2008
Case No.: [REDACTED]
Hearing Date: May 15, 2014
County: Grand Traverse

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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, an in person hearing was held on May 15, 2014, from Traverse City, Michigan. Participants on behalf of Claimant included Claimant's [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED]. [REDACTED] also participated by telephone on behalf of the Department.

ISSUE

Did the Department properly determine Claimant's divestment penalty 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. The Department issued a Notice of Case Action and Benefit Notice dated December 2, 2013, determining that an additional penalty period for January 1, 2014, through April 8, 2014 would be imposed because the wrong baseline dated was used in calculating the divestment penalty period.
2. Claimant requested hearing on December 26, 2013, contesting the begin date of the penalty period and asserting that agency error and over-issuance occurred that the Department should not pursue remedying.

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.

PENALTY PERIOD

No Maximum Penalty

There is no maximum limit on the penalty period for divestment. There is no minimum amount of resource transfer before incurring a penalty, determine a penalty on **any** amount of resources that are transferred and meet the definition of a divestment even if the penalty is for one day. Divestment is a type of transfer **not** an amount of transfer.

Any penalty period established under previous policy continues until it ends.

Apply the penalty policy in place at the time of transfer for any transfers made before February 8, 2006.

Computing Penalty Period

The penalty period is computed on the total Uncompensated Value of all resources divested.

Determine the Uncompensated Value for each resource transferred and combine into a total Uncompensated Value.

Divide the total Uncompensated Value by the average monthly private LTC Cost in Michigan for the Claimant's Baseline Date. This gives the number of full months for the penalty period. Multiply the fraction remaining by 30 to determine the number of days for the penalty period in the remaining partial month.

Apply the total penalty months and days. Apply a penalty even if the total amount of the penalty is for only a partial month

The penalty is applied to the months (or days) an individual is eligible for Medicaid and actually in LTC, [REDACTED]. The divestment penalty period cannot be applied to a period when the individual is not eligible for Medicaid for any reason (that is the case closes for **any** reason or is eligible for Medicaid but is **not** in LTC, [REDACTED]. Restart the penalty when the individual is again eligible for Medicaid and in LTC, [REDACTED]. When a medical provider is paid by the individual, or by a third party on behalf of the individual, for medical services received, that month is not a penalty month. That month cannot be counted as part of the penalty period. This does not include payments made by commercial insurance or Medicare. See Resources Returned in this item. **Note:** An individual is not eligible for MA in a month they have pre-paid for LTC. Because federal law directs that a resident in a nursing facility must have access to all monies held by the facility for the resident, count the money held by a nursing facility as cash.

The penalty period starts on the date which the individual is eligible for Medicaid and would otherwise be receiving institutional level care ([REDACTED]), and is not already part of a penalty period. When a medical provider is paid by the individual, or by a a third party on behalf of the individual, for medical services received, the individual is not eligible for Medicaid in that month and the month is not a penalty month. That month cannot be counted as part of the penalty period. This does not include payments made by commercial insurance or Medicare.

Note: If a past unreported divestment is discovered or an agency error is made which should result in a penalty, a penalty must be determined under the policy in place at the time of discovery. If a penalty is determined for an unreported transfer in the past, apply the penalty from the first day after timely notice is given; see Recipient Exception in this item.

BEM 405

Agency Error All Programs

An agency error is caused by incorrect action (including delayed or no action) by DHS staff or Department processes.

MA and ESS Only

Recoupment of agency errors are not pursued. BAM 700

Additionally, on October 24, 2013 Claimant's attorney [REDACTED] and Department supervisor [REDACTED] had a discussion about Claimant's case. It was discovered that the Claimant's baseline date to calculate the divestment period was incorrect. Both sides were in agreement that agency error occurred regarding the baseline date. There was disagreement regarding how the error should be addressed.

Claimant's attorney argued that the additional penalty period should run from [REDACTED] [REDACTED]. In addition, Claimant's attorney argued that since the penalty occurred in the past then Department over-issuance policy should come into play and that policy states that Medicaid over-issuances due to agency error are not pursued.

The Department argued at hearing that Department policy is clear regarding how errors in the calculation of divestment penalty periods should be addressed. BEM 405 states that "If past unreported divestment is discovered or an agency error is made which should result in a penalty, a penalty must be determined under the policy in place at the time of discovery. Based on this policy the Department gave notice and implemented the penalty period from January 1, 2014 through March 3, 2014.

This Administrative Law Judge finds that the Department acted properly and correctly in determining the additional penalty period. Recoupment policy does not address the issues related to this hearing because the Department is not attempting to recover monies from the Claimant. The Department is implementing the penalty period once it was discovered consistent with Department policy.

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 determined Claimant's additional divestment penalty period from [REDACTED].

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.



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

Date Signed: 7/1/14

Date Mailed: 7/1/14

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, 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 Claimant;
- 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

AM/tb

cc:

