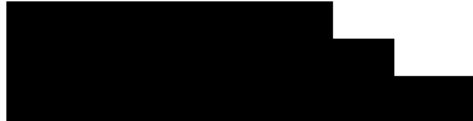


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 14-001341
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: August 7, 2014
County: Oakland-District 3 (Walled Lake)

ADMINISTRATIVE LAW JUDGE: Darryl T. Johnson

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 three-way telephone hearing was held on August 7, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] from L & S Associates. Claimant did not participate. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED].

ISSUE

Did the Department properly deny Claimant's application for Medical Assistance (MA) benefits?

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 retroactive Medicaid benefits on January 8, 2014.
2. Claimant's application was denied due to excess assets which consisted of multiple motor vehicles that he owned:
 - a. 2005 Toyota Prius, reported value \$1,000 (Exhibit 1 Page 11), Blue Book value (fair condition) \$4,675 (Exhibit 1 Page 24).
 - b. 1994 Ford Mustang, reported value \$1,000 (Exhibit 1 Page 11), Blue Book value (fair condition) \$2,783 (Exhibit 1 Page 28).
 - c. 1990 Ford Mustang, reported value \$500 (Exhibit 1 Page 11), Blue Book value (fair condition) \$4,025 (Exhibit 1 Page 30).

3. On January 13, 2014, Claimant sold three of the vehicles for:
 - a. 2005 Toyota Prius: \$300 (Exhibit 1 Page 31)
 - b. 1994 Ford Mustang: \$250 (Exhibit 1 Page 32)
 - c. 1990 Ford Mustang: \$250 (Exhibit 1 Page 33)
4. On February 4, 2014, Claimant's agent filed a new application for MA.
5. On February 4, 2014, the Department approved Claimant for MA effective February 1, 2014. (Exhibit 1 Page 35.) Claimant was not approved for MA for the month of January 2014.
6. On April 4, 2014, the Department received Claimant's hearing request.

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.

Claimant initially applied for MA and his application was denied due to excess assets. Per BEM 400 (2/1/14) p. 7, the MA limit is \$2,000 for an individual and \$3,000 for a couple. Claimant had at least three motor vehicles, with book values totaling \$11,483. If the highest value vehicle was disregarded, the remaining value was \$6,808, which is more than double the asset limit. As directed in BEM 400 at 36, the Department properly excluded "one motorized vehicle owned by the asset group. If the asset group owns multiple motorized vehicles:

"Use the Employment Asset Exclusions first, then
"From any remaining motorized vehicles, exclude the one with the highest equity value."

Claimant then sold the three vehicles and now has a 2000 [REDACTED]. It is unknown when that pickup was acquired, or what its value is. Regardless, Claimant sold the three vehicles, presumably worth \$11,483, for a total of \$800. BEM 405 (7/1/14) sets forth the policy the Department is to follow when there is a "divestment". At page 1,

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.

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.

During the penalty period, MA will **not** pay the client's cost for:

LTC services.
Home and community-based services.
Home Help.
Home Health.

MA will pay for other MA-covered services.

Resource means all the client's and his spouse's assets and income. It includes all assets and all income, even countable and/or excluded assets, the individual or spouse receive. BEM 405 p 1.

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. **Not** all transfers are divestment.

Selling an asset for fair market value is not a divestment. Conversely, selling an asset for less than fair market value IS a divestment.

At pages 5 and 6 additional direction is found.

The first step in determining the period of time that transfers can be looked at for divestment is determining the **baseline date**; see Baseline Date in this item.

Once the baseline date is established, you determine the look-back period. The look back period is 60 months prior to the baseline date for all transfers made after February 8, 2006.

Entire Period

Transfers that occur **on** or **after** a client's baseline date must be considered for divestment. In addition, transfers that occurred within the 60 month look-back period must be considered for divestment.

Penalty Situation

A divestment determination is **not** required unless, sometime during the month being tested, the client was in a penalty situation. To be in a penalty situation, the client must be eligible for MA (other than QDWI) and be one of the following:

- In an LTC facility.
- APPROVED FOR THE WAIVER; see BEM 106.
- Eligible for Home Help.
- Eligible for Home Health.

Baseline Date

A person's baseline date is the **first** date that the client was eligible for Medicaid and one of the following:

- In LTC.
- APPROVED FOR THE WAIVER; see BEM 106.
- Eligible for Home Health services.
- Eligible for Home Help services

The parties did not provide evidence as to the nature of care Claimant had received prior to the application. If Claimant were subject to the penalty situation described above, Claimant would have been subject to a penalty period if he would otherwise have been eligible. As stated in BEM 400 (7/1/14) p 6, "Asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested." Claimant was, based on the evidence presented, not eligible because of the excess assets he owned at the time of his original application. After he sold his vehicles, he was possibly below the asset limit. Because the hearing focused on the vehicles that collectively exceeded the asset limit, no evidence was presented as to what other assets might have been owned. Furthermore, even after the vehicles were sold, no evidence was presented to explain what happened

to the money Claimant received from the sale of the vehicles. Did he still have excess assets at that point? The answer to that question remains unknown. Did the documents from the Secretary of State accurately reflect the sale price of the vehicles? It is not unheard of for purchasers and sellers of vehicle to report artificially low sale prices when the vehicles are transferred in order to minimize the sales tax that is paid upon the transfer.

If Claimant met the asset limit for any day in the month of January; and if he were not in one of the penalty situations, then it seems he was eligible. "Asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested." BEM 400, p 6.

Important questions remain unanswered. The Administrative Law Judge is not prepared to conclude that the Claimant was – or was not - eligible for retroactive MA at the time of the second application. The most that can be said is that the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's second MA application.

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 denied Claimant's application for MA.

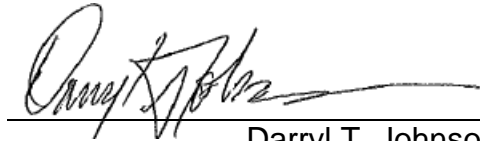
When the Department reconsiders Claimant's application, it might wish to seek verification of the amounts he received from the sale of each vehicle, when he acquired the 2000 Ford pickup, and whether he met the asset limits for the month of January.

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. Redetermine Claimant's retroactive MA benefit eligibility for the month of January 2014, based upon the February 4, 2014, application. Once the Department has made a determination of eligibility or lack thereof for MA benefits, the Department shall notify Claimant in writing of the determination.



Darryl T. Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **8/8/2014**

Date Mailed: **8/8/2014**

DTJ / jaf

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:

