

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 14-003903  
Issue No.: 2008  
Case No.: [REDACTED]  
Hearing Date: August 13, 2014  
County: MARQUETTE

**ADMINISTRATIVE LAW JUDGE: Susanne E. Harris**

**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 August 13, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] General Program Services Manager, [REDACTED] and Eligibility Specialist, [REDACTED].

**ISSUE**

Did the Department properly determine the Claimant's Medical Assistance (MA) divestment penalty?

**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 Claimant's son, as the Claimant's DPOA, hired the Claimant's Attorney on behalf of the Claimant.
2. On March 31, 2014, the Claimant's Attorney submitted to the Department a breakdown of the net proceeds of the sale of the Claimant's [REDACTED]. The home sold for \$ [REDACTED].
3. The Claimant's Attorney does not dispute that \$ [REDACTED] was a gift to the Claimant's [REDACTED] and is subject to a divestment penalty.

4. The Claimant's son spent \$ [REDACTED] coming to [REDACTED] to have the Claimant's MA application completed and to maintain the Claimant's [REDACTED] so that it could be sold.
5. The Claimant's [REDACTED] also spent \$ [REDACTED] paying the Claimant's bills and expenses involved in maintaining the Claimant's home.
6. The Claimant's son also spent \$ [REDACTED] hiring the Claimant's Attorney to represent the Claimant with pursuing MA benefits.
7. The amounts listed in facts 4-7 are the amounts in contention at this hearing.
8. On May 20, 2014, the Department sent the Claimant's DPOA notice of a divestment penalty.
9. On May 29, 2014, the Department received the Claimant's Attorney's hearing request, protesting the Department's divestment calculations.

#### **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.

The Claimant's Attorney argues that the Claimant's legal fees are not a gift to her son and are not subject to divestment. The Claimant's [REDACTED] DPOA testified that the Claimant's [REDACTED] was threatening to cancel the Claimant's homeowner's policy because of the physical condition of the house. The Claimant's Attorney argues that expenses for maintaining the Claimant's home so that it could be later sold are not subject to divestment. The Claimant's Attorney argues that the expenses for the Claimant's [REDACTED] to come to Michigan and pursue MA on her behalf are not subject to divestment, as he is her DPOA. The only contested amounts in this case are the \$ [REDACTED] attorney fees, \$ [REDACTED] re-payment to the Claimant's [REDACTED]/DPOA, and \$ [REDACTED] maintenance and care of the Claimant's home. These amounts total \$ [REDACTED].

Additionally, Bridges Eligibility Manual (BEM) 400 (2014) sets the asset limit for MA. BEM 405 addresses divestment penalties. Divestment means a transfer of a resource by a Claimant or his spouse that is within a specified time and is a transfer for less than

fair market value. The Department argues that the Claimant's Attorney's legal fees are a transfer of assets for less than fair market value, because the Claimant ultimately made a gift to her [REDACTED] the monies of which were then subject to divestment. The Administrative Law Judge is not persuaded by this argument, as it presumes that anytime an attorney plans a Claimant's estate wherein a gift is made that is subject to divestment that those attorney services are for less than fair market value. Having considered both arguments, the Administrative Law Judge concludes that the monies spent repairing and maintaining the home, and the monies spend for the Claimant's DPOA to travel to Michigan and the Claimant's Attorney's fees are not subject to divestment, as they are not a transfer for less than fair market value but rather reimbursement for legitimate expenses incurred. The Administrative Law Judge determines that the disputed amount of \$ [REDACTED] is not subject to 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 determined the Claimant's divestment penalty.

### **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. Re-determine the Claimant's divestment penalty omitting the \$ [REDACTED] list of expenses and attorney fees, and
2. Issue the Claimant any supplement she may thereafter be due.



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**Susanne E. Harris**

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

Date Signed: **8/27/2014**  
Date Mailed: **8/28/2014**

**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 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

SEH/tb

cc:

