



4. An application for assistance seeking MA benefits on behalf of Claimant was received by the Department on November 25, 2013. (Exhibit 6)
5. At the time of application, Claimant was a resident of a long-term-care (LTC) facility.
6. As a result of the transfer of the home, the Department determined that a divestment occurred and imposed a divestment penalty from November 1, 2013 through November 9, 2014.
7. On May 27, 2014, the Department sent Claimant and her attorney a Benefit Notice informing them of Claimant's eligibility for MA and the imposition of the divestment penalty. (Exhibit 1)
8. On June 9, 2014, the Department received Claimant's timely written request for 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.

Divestment is a type of transfer of a resource and not an amount of resources transferred. Divestment results in a penalty period, not MA program ineligibility. BEM 405 (October 2013), p. 1. During the penalty period, MA will not pay the client's cost for: LTC services, home and community-based services, home help or home health. MA will pay for other MA-covered services. BEM 405, p.1.

The Department defines divestment as a transfer of a resource by a client or spouse that is within the look-back period and is transferred for less than fair market value (FMV). BEM 405, p. 1. To determine if an asset transfer qualifies as divestment, the baseline date must first be established. A person's baseline date is the first date that the client was eligible for MA and one of the following: in LTC, approved for the waiver, eligible for home health services, or eligible for home help services. BEM 405, p.6. Transfers that occur on or after a client's baseline date must be considered for

divestment. In addition, once the baseline date is established, the Department will determine the look-back period, which is 60 months prior to the baseline date for all transfers made after February 8, 2006. BEM 405, p. 5.

In this case, Claimant was a resident of a LTC facility at the time of application in November 2013, which would be the baseline date. It was undisputed that Claimant signed a Quit Claim Deed transferring her home on August 13, 2012, which is within the 60 month look-back period. Therefore, the Department properly determined that the transfer was within the look-back period, or the time frame that allows for a divestment penalty.

Because the transfer was within the look-back period, the Department must next consider whether the transfer was made for less than fair market value. Less than fair market value means the compensation received in return for a resource was worth less than the fair market value of the resource. That is, the amount received for the resource was less than what would have been received if the resource was offered in the open market and in an arm's length transaction. BEM 405, p.6.

To determine the FMV of real property, the Department may use: a deed, mortgage, purchase agreement or contract; the State Equalized Value (SEV) on current property tax records multiplied by two; statement of real estate agent or financial institution; attorney or court records or county records. BEM 400 (October 2013), p.29. For SSI-Related MA cases, the value is the equity value. Equity value is the fair market value minus the amount legally owed in a written lien provision. Liens must be filed with the register of deeds or other appropriate agency. BEM 400, pp. 29-30.

The Department testified that the FMV of \$94,000 was determined by multiplying the SEV of \$47,000 based on the tax records, by two. The Department asserted that because Claimant transferred the home to [REDACTED] for only \$1, the transfer was less than the \$94,000 FMV and considered divestment. Claimant's attorney argued that the transfer reflected compensation for the value of services rendered to Claimant by [REDACTED], as well as numerous out-of-pocket expenses that were incurred. There was testimony provided concerning the services and assistance that Mr. and Mrs. Bitz provided to Claimant prior to the asset transfer, including, helping her with chores, driving her to appointments, and repairs that were made to Claimant's home by [REDACTED] which he estimated were valued were at \$30,000. There was no documentation presented however, such as receipts for expenses, supporting [REDACTED] testimony that the value of his services and the repairs made to the home was \$30,000.

BEM 405 provides that compensation must have tangible form and intrinsic value. Relatives or other care providers can be paid for providing services; however, the Department is to assume that services were provided for free when no payment was made at the time the services were provided. A client can rebut this presumption by providing tangible evidence that a payment obligation existed at the time the service

was provided (for example a written agreement signed at the time the services were first provided.) BEM 405, pp. 6-7.

██████████ testified that Claimant expressed her desire and intention for them to have her home in exchange for their services and assistance and presented a Last Will and Testament in support of their testimony. (Exhibit 8). Claimant's attorney failed to present any evidence of a written agreement between ██████████ and Claimant concerning Claimant's intentions with respect to the property while she was still living or while the services were being performed; and ██████████ confirmed that such a written agreement was never executed. Furthermore, the verbal agreement made between Claimant and ██████████ does not meet the criteria set forth in BEM 405 concerning home caretaker and personal care contracts. BEM 405, pp. 7-8. Therefore, because there was no written agreement or other convincing tangible evidence to establish that a payment obligation existed at the time the services were rendered, the presumption that the care was provided for free remains unrebutted.

There was, however, evidence presented that a mortgage remained on the property until the time of sale, on November 20, 2013. Claimant's attorney asserted that the mortgage was not transferred to ██████████ and that Claimant continued to make the monthly payments towards the mortgage, until the \$70,000 remaining balance was paid off at the time of sale. (Exhibits 5 and A). The Department testified that in determining the FMV, it did not consider the value of the mortgage remaining, and that it did not have any information concerning the amount legally owed on the property at the time of the transfer. Although the Department did not consider the value of the mortgage and did not properly calculate the equity value of the property, as required by BEM 400; based on the evidence presented, the transfer in the amount of \$1 would clearly still be less than the FMV and equity value had the Department considered the value of the mortgage. Therefore, the Department established that the transfer was for less than the FMV.

Because the Department established that a divestment occurred based on the transfer of the home during the look-back period for less than FMV, an analysis of the computation of the applicable penalty period follows.

The Department determined that Claimant was eligible for MA, but subject to a divestment penalty for the period between November 1, 2013, and November 9, 2014. The Department stated that in computing the penalty period, it relied on the \$94,000 FMV figure discussed above. According to BEM 405, however, the penalty period is computed based on the total uncompensated value of all resources divested. The uncompensated value of a divested resource is: the resource's cash or equity value minus any compensation received. The uncompensated value of a promissory note, loan, or mortgage is the outstanding balance due on the baseline date. BEM 405, pp. 12, 14-15. Once the total uncompensated value is determined, the Department is to divide that amount by the average monthly private LTC Cost in Michigan, which is based on the client's baseline date. This gives the number of full months for the penalty

period. The fraction remaining is multiplied by 30 to determine the number of days for the penalty period in the remaining partial month. BEM 405, pp.12-13. Because the mortgage was not taken into consideration, and because the mortgage would have an impact on the uncompensated value, the Department did not properly determine the uncompensated value of the resources transferred, thus, the Department did not properly compute the penalty period.

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 that a divestment occurred, however, the Department did not act in accordance with Department policy when it computed the divestment penalty period.

### **DECISION AND ORDER**

Accordingly, the Department's decision is AFFIRMED IN PART with respect to the determination that a divestment occurred and REVERSED IN PART with respect to the computation of the penalty period.

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. Recompute the divestment penalty period;
2. Supplement Claimant for any MA benefits that she was entitled to receive but did not from the application date, ongoing; and
3. Notify Claimant and her representatives in writing of the Department's decision.



**Zainab Baydoun**

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

Date Signed: **9/26/2014**

Date Mailed: **9/26/2014**

ZB / cl

**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:

[REDACTED]