

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 14-008904  
Issue No.: 2001  
Case No.: [REDACTED]  
Hearing Date: October 1, 2014  
County: Oakland-District 4 (N Saginaw)

**ADMINISTRATIVE LAW JUDGE: Darryl 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 October 1, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant's attorney, [REDACTED]; her daughter, [REDACTED]; and her son, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED]. Assistant Attorney General [REDACTED] represented the Department.

**ISSUE**

Did the Department properly determine the divestment penalty period for Claimant's Medicaid (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 MA on April 30, 2014.
2. On June 24, 2014, the Department approved Claimant's application.
3. On November 15, 2010, Claimant had sold a piece of real estate on a land contract, providing her with monthly income of [REDACTED] through November 15, 2015, and a balloon payment of [REDACTED] plus [REDACTED] in interest on December 15, 2015. (Exhibit 1 Page 26.)

4. On December 9, 2013, Claimant executed a quit claim deed (Exhibit 1 Page 35) and an assignment of land contract (Exhibit 1 Pages 36-38) in which she transferred the property to her daughter; in return, the daughter paid her [REDACTED].
5. As of December 15, 2014, the land contract had a principle balance of [REDACTED]. (Exhibit 1 Page 26.)
6. The quit claim deed and the assignment were recorded on June 20, 2014, after Claimant's application was submitted.
7. In her application, Claimant stated that she owned real estate (Exhibit 1 Page 9) and that she had not sold or given away any land within the last 60 months (Exhibit 1 Page 10).
8. In a letter dated October 18, 2013, the Department was notified that Claimant was receiving land contract income of [REDACTED] per month. (Exhibit 1 Page 31.)
9. In a Benefit Notice (Exhibit 1 Pages 43-44) dated July 2, 2014, the Department informed Claimant that Medicaid would not pay for long-term care or home/community based services from August 1, 2014, through December 15, 2014, because of a [REDACTED] divestment.
10. The Department received Claimant's hearing request on July 28, 2014.

### **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 results in a penalty period in MA, not ineligibility. BEM 405 (July 2014), p. 1. Divestment means 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. Less than FMV means the compensation received in return for a resource was worth less than the FMV of the resource. BEM 405, p. 5. Transferring a resource means giving up all or partial ownership in, or rights to, a resource. BEM 405, p. 2. The giving away of an asset results in divestment. BEM 405, p. 2. During the penalty period, MA will not pay for long-term care services. BEM 405, p. 1.

Claimant, through her attorney, argued that the land contract was sold to her daughter for [REDACTED], because there was no market for land contracts. The amortization schedule shows that the land contract balance in December 2013 (when it was sold to the daughter) was [REDACTED]. The daughter was able to acquire an income stream of [REDACTED] per month for less than [REDACTED] on the dollar.

In BEM 400 (2/1/14) at page 39, the policy is expressed regarding valuing promissory notes, land contracts and mortgages:

The value of a promissory note, land contract or mortgage is the amount it can be sold for in the holder's geographic area on short notice (usually at a commercial discount rate) minus any lien on the property the holder must repay. If the note meets the requirements listed above and also states that it is non-salable and non-transferable, then the note itself is not a countable asset, but the payments are countable unearned income.

Claimant attempted to introduce two opinions from real estate agents valuing the land contract at [REDACTED]. Those opinions were not admitted because there was no way to determine whether the agents had the expertise to offer such an opinion. Furthermore, those letters were not submitted to the Department when the application was submitted, and the Department therefore did not have those documents as possible evidence at the time it processed Claimant's application. The Claimant failed to provide the Department with reliable evidence of the value of the land contract, other than the amortization schedule. Because the amortization schedule showed a balance of [REDACTED] when the property was sold, that is the amount that should have been used to value the land contract.

It is important to note that the Department used a different analysis when determining the value of the land contract. The Department took a very convoluted (and erroneous) approach, as explained in the hearing summary. The Department's approach was as follows:

Original land contract principal	[REDACTED]
Sixty payments of [REDACTED]	[REDACTED]
Balloon payment	[REDACTED]
Sixty payments of [REDACTED]	[REDACTED]
Forty-four months paid at [REDACTED]	[REDACTED]
Monthly payments remaining	[REDACTED]
Balloon payment	[REDACTED]
Monthly payments remaining	[REDACTED]
Balance due	[REDACTED]

What the Department overlooked was the interest that was accruing on the land contract. When interest is charged on a loan, a portion of the monthly payment pays

the interest, and the balance of the monthly payment reduces the principle. In this case, during the time the land contract was being paid to Claimant, she had received several thousand dollars in interest, and because of that, the principle balance was several thousand dollars higher than what the Department calculated.

BEM 405 states: "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."

At BEM 405, p. 11 we find: "As explained below, transfers exclusively for a purpose other than to qualify or remain eligible for MA are not divestment.

"Assume transfers for less than fair market value were for eligibility purposes until the client or spouse provides convincing evidence that they had no reason to believe LTC or waiver services might be needed."

The Department is to assume transfers for less than fair market value were for eligibility purposes. The Claimant then must provide convincing evidence that they had no reason to believe LTC or waiver services might be needed. On June 28, 2014, the Department received an email (Exhibit 1 Page 34) stating, "First off I want to say how happy I am (Claimant's) Medicaid finally got approved!!! I have attached a copy of the land contract being transfer (sic) to her daughter ()'s name (I really hope this doesn't mess anything up). (The daughter) will now be receiving the [REDACTED] monthly income instead of (Claimant). I was hoping to get (Claimant's) PPA adjusted. Thanks for assisting in getting this case approved." There does not seem to be a dispute that this was a divestment. The dispute centers on the length of the divestment. Interestingly, there is a hand-written note on the copy of the email reflecting a "balance" of [REDACTED], which corresponds to the amortization schedule (Exhibit 1 Page 26) balance as of June 15, 2014.

Because the property was actually transferred in December, the Department should have used the balance of [REDACTED] as the starting point. Claimant received [REDACTED] from her daughter for the land contract. Another error by the Department was that it counted the whole value of the land contract (as it calculated that value) but it did not account for the money that the daughter paid for the land contract. This was not a situation where the land contract was given entirely to the daughter; consideration was paid, so the divestment is the difference between the value of the land contract, and the amount the daughter paid for the land contract. The actual divestment (uncompensated value) is therefore [REDACTED].

BEM 405 at page 12 instructs the Department to: "Divide the total Uncompensated Value by the average monthly private LTC Cost in Michigan for the client'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 average cost of care for 2014 (BEM 405, p 13) is \$7,867. When the [REDACTED] is divided by [REDACTED] it results in a penalty period of 4.05 months, or 4 months and 1 day.

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 did not act in accordance with Department policy when it imposed a penalty period of 4.50 months for Claimant’s long-term care coverage.

**DECISION AND ORDER**

Accordingly, the Department’s decision is **MODIFIED** with respect to the imposition of a divestment 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. Redetermine Claimant’s MA eligibility and provide MA benefits to Claimant, if otherwise eligible, after she has satisfied the penalty period.



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

Date Signed: **10/3/2014**

Date Mailed: **10/3/2014**

DJ/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:

