

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-004880
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: September 09, 2014
County: CHARLEVOIX

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 September 9, 2014, from Lansing, Michigan. Participants on behalf of Claimant included her daughter [REDACTED] and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included AAG Shimkus, General Program Manager [REDACTED] and ES [REDACTED].

ISSUE

Did the Department determine the proper divestment penalty period for Claimant's Medical Assistance?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On April 24, 2014, Claimant entered a nursing home.
2. On May 2, 2014, a Medical Assistance application was submitted on Claimant's behalf.
3. On May 23, 2014, another Medical Assistance application was submitted on Claimant's behalf.
4. On June 4, 2014, Claimant was sent a Health Care Coverage Determination Notice (DHS-1606) and a Benefit Notice (DHS-176). The notices stated Claimant's divestment resulted in a 7 month 11 day divestment penalty period.
5. On June 9 & 11, 2014, hearing requests were submitted on Claimant's behalf.

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's daughter, [REDACTED], deposited and withdrew funds from Claimant's bank accounts. This divestment was derived from review of Claimant's account statements from August 2012 forward and receipts and statements submitted by [REDACTED]. The Department allowed expenditures which matched dates, amounts and check numbers listed on Claimant's bank statements. Claimant does not dispute that a divestment penalty period should occur. Claimant asserts that the divestment amount is too large because the Department has not subtracted all the expenditures incurred on Claimant's behalf.

Bridges Eligibility Manual (BEM) 405 MA Divestment is the authority source used by the Department to calculate divestment amounts. Claimant asserts the additional expenditures not subtracted, were incurred for the benefit of Claimant. At this hearing Claimant submitted: a credit card statement which shows payment on four separate [REDACTED] receipts during March 2014; three of the four [REDACTED] receipts; a July 16, 2011, prepaid funeral contract for Claimant; and an August 16, 2011, receipt for carpeting two rooms.

It is noted that a \$ [REDACTED] March 5, 2014 [REDACTED] was allowed as a reduction of the divestment amount. The credit card statement indicates charges at [REDACTED] of: \$ [REDACTED] on March 5, 2014; \$ [REDACTED] on March 11, 2014; \$ [REDACTED] and \$ [REDACTED] on March 19, 2014. During this hearing [REDACTED] testified that some of the transactions at [REDACTED] involved a return. Neither the testimony during the hearing nor 30 minutes of reviewing the Art Van receipts afterwards provided an understanding of what the final cost for the new bed was. It is the responsibility of Claimant to present verification. Nothing presented at this hearing convinces this Administrative Law Judge that the cost of the new bed needs to be recalculated.

A sales slip of the August 16, 2011 carpet purchase was previously submitted but not allowed because it did not show a year of purchase. The divestment Claimant disputes

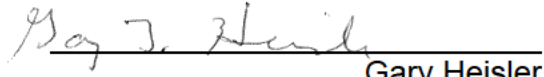
was calculated from August 2012 forward. Expenditures from 2011 are not relevant to the unaccounted funds from August 2012 forward.

At the time of application prepaid funeral expenses were listed. Documentation was submitted to the Department on May 23, 2014. (Pages 78-80) The documentation indicated the cost to complete arrangements for Claimant was \$ [REDACTED]. It also indicated that a \$ [REDACTED] down payment had been made and that payments for the rest would begin May 25, 2014. The Department did not allow the \$ [REDACTED] because it had not been paid. The July 16, 2011 contract shows that [REDACTED] paid \$ [REDACTED] in full on July 16, 2011, for the same services annotated in pages 78-80. Once again, expenditures from 2011 are not relevant to the unaccounted funds from August 2012 forward.

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 the divestment penalty period for Claimant's Medical Assistance.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



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

Date Signed: **10/7/2014**

Date Mailed: **10/7/2014**

GFH/hj

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:

