

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-011844
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: December 17, 2014
County: Ingham

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 four-way telephone hearing was held on December 17, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant's attorney, [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 application?

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 entered a nursing home on April 1, 2014.
2. Claimant's attorney filed an application for Long Term Care Medicaid on May 29, 2014.
3. In the 60 months preceding the application, Claimant had made gifts totaling \$ [REDACTED].
4. At the time of her application, Claimant had countable assets of \$ [REDACTED] and recurring monthly income of \$ [REDACTED].
5. At the time of her application, Claimant had an unpaid balance to the nursing home of \$ [REDACTED] for care received in May 2014, as well as other unpaid medical expenses.

6. On July 17, 2014, the Department issued a Health Care Coverage Determination Notice (Exhibit 1 Pages 3-5) finding that she was “not eligible for Medicaid for May 2014 since she private paid for the month and has a 0.00 balance for May 2014. Divestment cannot begin until a person is eligible for Medicaid. Divestment period is from June 1-20, 2014. Per BEM 400 pg. 6 and BEM 504.” The unpaid balance due to the nursing home had been paid in full by the time her application was processed.
7. On September 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.

The Department’s position is that, because Claimant had no unpaid balance at the nursing home when her application was finally processed, she was not eligible for Medicaid. As stated in BEM 405 (7/1/14) page 12, a penalty period is imposed if an applicant has given away assets for less than fair market value. The penalty period is computed on the uncompensated value of the gifted assets. The total gift is divided by the average monthly private LTC cost¹ in Michigan. If the result is less than 1.00, the fraction is multiplied by 30 to determine the number of days for the penalty period in a partial month.

At page 13, BEM 405 instructs the Department that the divestment penalty period cannot be applied to a period when the individual is not eligible for Medicaid for any reason. The penalty period will be restarted when the individual is again eligible for Medicaid and in LTC or another approved status. “When a medical provider is paid by the individual, or by a third party on behalf of the individual, for medical services received, that month is not a penalty month. That month cannot be counted as part of the penalty period. This does not include payments made by commercial insurance or Medicare.” It goes on to state, “An individual is not eligible for MA in a month they have pre-paid for LTC.”

The policy does not explicitly state whether the medical provider must be paid in whole or in part for a month for that month to not be counted as part of the penalty period. The Department’s position is that Claimant had paid the balance in full before her application

¹ The average LTC cost for 2014 is \$7,867. BEM 405 at 13.

was approved, and for that reason she was found to not be eligible for Medicaid for May 2014. The evidence establishes that, at the time of her application, she had unpaid medical expenses. The balance was not paid until June 25, 2014.

The Department's position, as stated in its Response to Petitioner's Hearing Brief, is that Claimant had assets available in May with which to meet at least some of her medical expenses, and those assets were subject to a spend-down before she would be eligible. The argument is that she had to use her unprotected assets before she would be eligible, and, because she used those assets to pay for at least some of May, the penalty period should not begin on May 1, 2014.

As the Department notes, the divestment penalty period begins "the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care described in subparagraph (C) based on an approved application for such care but for the application of the penalty period, whichever is later . . ." 42 USC 1396p(c)(1)(D)(ii).

The penalty period begins "the first day of a month" so the question is, does it begin on May 1 or June 1? Because the cited law says it begins at the latter of (a) the month when the assets are transferred, or (b) the month when the individual is eligible for medical assistance, the decision hinges on when she is eligible for medical assistance. Obviously, she made the gifts which caused the penalty period before she even applied, and she would not be eligible until she applied (disregarding any retroactive eligibility issues), so the penalty period begins on the first day of the month when she is eligible for medical assistance.

Claimant paid for a portion of her nursing home care from her countable assets. Her countable assets were less than the average monthly private pay LTC cost. After she spent down her countable assets, she was eligible for Medicaid. Her eligibility occurred in the month of May. Therefore, her penalty period should have begun on May 1, 2014.

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 determined the penalty period began on June 1, 2014.

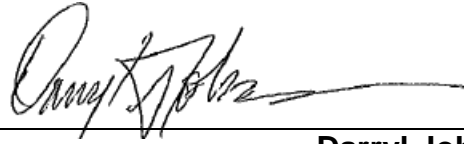
DECISION AND ORDER

Accordingly, the Department's decision regarding Claimant's MA 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. Reregister Claimant's May 29, 2014, MA application;

2. Begin reprocessing the application to determine if all other non-medical criteria, are satisfied and notify Claimant of its determination; and
3. Provide Claimant with MA coverage if she is eligible to receive from May 1, 2014 ongoing, imposing a divestment penalty period beginning May 1, 2014.



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

Date Signed: **12/23/2014**

Date Mailed: **12/23/2014**

DJ/las

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 48909-8139

cc:

