

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-012630
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: December 11, 2014
County: Newaygo

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 December 11, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant's authorized hearing representative [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [REDACTED].

ISSUE

Did the Department properly apply a divestment penalty towards the Claimant's Medical Assistance (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. The Claimant is an ongoing Medical Assistance (MA) recipient.
2. On July 24, 2013, the Claimant transferred real estate for less than fair market value.
3. The Claimant paid out a total of \$ [REDACTED] for personal care and services.
4. On September 4, 2014, the Department notified the Claimant that it would apply a 56 month divestment penalty against her Medical Assistance (MA) benefits.
5. On September 12, 2014, the Department received the Claimant's request for a hearing protesting the divestment penalty.

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 means a transfer of a resource by a client or his spouse that is within 60 months of the baseline date for less than fair market value that is not excluded by policy. Department of Human Services Bridges Eligibility Manual (BEM) 405 (July 1, 2014), p 1.

A person's baseline date is the first date that the client was eligible for Medicaid and one of the following:

- In long term care.
- Eligible for Home Health services.
- Eligible for Home Help services. BEM 405, p 6.

Divestment is a type of transfer of a resource and not an amount of resources transferred. Divestment results in a penalty period in Medical Assistance (MA), not ineligibility. During the penalty period, Medical Assistance (MA) will not pay the client's cost for:

- LTC services.
- Home and community-based services.
- Home Help.
- Home Health. BEM 405, p1.

Resource means all the client's and spouse's assets and income. Transferring a resource means giving up all or partial ownership in (or rights to) a resource. 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. BEM 405, pp 1-6.

A contract/agreement that pays prospectively for expenses would be considered a divestment. Relatives who provide assistance or services are presumed to do so for love and affection, and compensation for past assistance or services shall create a rebuttable presumption of a transfer for less than fair market value. BEM 405, p 7.

Such contracts shall be considered a transfer for less than fair market value unless the compensation for services is performed after a written legal contract/agreement has been executed between the client and provider. Department policy requires that the written contract be is dated and contain the notarized signatures. BEM 405, pp 7 – 8.

The uncompensated value of a divested resource is

- The resource's cash or equity value.
- Minus any compensation received. BEM 405, p 15.

The Department will determine the length of the divestment penalty by dividing the total uncompensated value by the average monthly private long term care cost in Michigan for the client's baseline date. This gives the number of full months for the penalty period. The Department will multiply the fraction remaining by 30 to determine the number of days for the penalty period in the remaining partial month. BEM 405, p 12.

In this case, the Claimant applied for Medical Assistance (MA) and entered into long term care. As part of a routine determination of the Claimant's eligibility for long term care benefits, the Department determined whether there had been any divestment during the 60 month look back period before the Claimant entered into long term care.

The Department discovered that on July 24, 2013, the Claimant transferred real estate for \$ [REDACTED]. The Department determined that at the time of the transfer, the real estate was worth \$ [REDACTED] by multiplying the state equalized value (SEV) on record by 2, as directed by Department policy. Department of Human Services Bridges Eligibility Manual (BEM) 400 (July 1, 2014). The Department determined that the uncompensated value for this transaction was \$ [REDACTED] by subtracting the value received by the Claimant by the value of the property.

The Claimant's representative disputed the Department's valuation of the real estate transferred in this case but failed to present evidence supporting another method of determining its fair market value. The Claimant testified that he talked to real estate agents about the value of the property but did not obtain written evidence showing a lower value. Department policy allows for the fair market value of real estate to be determined from sources other than the state equalized value, but also considers the state equalized value to be a reliable means of determining value in the absence of contradictory evidence.

The Department examined the Claimant's bank records during the look back period and found a series of expenditures of \$ [REDACTED] per month to the Claimant's representative for a total transfer of \$ [REDACTED]. These expenditures were found to be compensation for personal care and services provided by the Claimant's representative. Department policy considers such expenditures to be a divestment unless they were made after a written contract for the services has been signed.

The Claimant's representative testified it was the personal preferences of the Claimant to have a family member provide these services instead of a professional caregiver. The Claimant's representative did not dispute that the services were not provided under a written contract with the Claimant.

The Claimant's representative did not dispute the Department's determination of the length of the divestment based on the value of the divestment amount. The Claimant's representative testified that there was no intent to deceive but that the divestment penalty would be a hardship to the Claimant.

The Department may waive the divestment penalty if it creates undue hardship, but the Department will assume there is no undue hardship unless there is evidence to the contrary. Undue hardship exists when the client's physician determines that:


- Necessary medical care is not being provided, and
- The client needs treatment for an emergency condition. BEM 405, p 16.

In this case, the Claimant's representative failed to present evidence of undue hardship.

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 penalty should be applied against the Claimant's Medical Assistance (MA) benefits.

DECISION AND ORDER

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



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

Date Signed: **12/29/2014**

Date Mailed: **12/29/2014**

KS/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 48909-07322

cc:

