

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-003057-RECON
Old Reg No. 14-003057
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: August 19, 2014
County: Ingham

DECISION AND ORDER OF RECONSIDERATION

Procedural Summary

This matter is before the undersigned Supervising Administrative Law Judge pursuant to the Department of Health and Human Services (Department's) timely Request for Rehearing/Reconsideration of the Hearing Decision. The procedural history in this matter is set forth below.

On August 19, 2015, an administrative hearing took place. The assigned Administrative Law Judge mailed Hearing Decision on August 21, 2014. The Department filed a request for rehearing/reconsideration on September 19, 2014. An Order Granting Request for Reconsideration was mailed on January 8, 2015. On May 15, 2015, The Appellant filed a Motion to Vacate Order Granting Request for Reconsideration. The Department, on June 2, 2015, filed a Brief in Response to the Motion to Vacate.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015 and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs that is the basis for the appellant' benefits application, and may be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

ISSUE

Whether the Administrative Law Judge of record erred in finding that the Department did not properly determine and impose a divestment penalty period for purposes of the Medical Assistance (MA) program?

FINDINGS OF FACT

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

1. The Findings of Fact contained in paragraph No. 1 through 5 of the assigned Administrative Law Judge's (ALJ) Hearing Decision, Registration Number 14-003057, are incorporated by reference.
2. Following a hearing on August 19, 2014, the ALJ issued and mailed a Hearing Decision on August 21, 2014, which "modified" the Department's decision with respect to the imposition of a divestment penalty period. The ALJ ordered the Department to redetermine Appellant's MA eligibility and provide Appellant with MA benefits, if otherwise eligible, after she has satisfied the penalty period.
3. On September 19, 2014, the Michigan Administrative Hearing System (MAHS) received the Department's Request for Rehearing/Reconsideration.
4. On January 8, 2015, an Order Granting Reconsideration was issued.

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.

According to BEM 405, p. 1 (October 1, 2013), a divestment results in a penalty period in MA, not ineligibility. "Divestment" is defined 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. 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.

According to BEM 405, “[w]hen a client jointly owns a resource with another person(s), any action by the client or by another owner that reduces or eliminates the client’s ownership or control is considered a transfer by the client.” “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.” In addition, BEM 405, p. 11 provides, “[a]s explained below, transfers exclusively for a purpose other than to qualify or remain eligible for MA are not divestment.” This policy further assumes “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.” (With emphasis)

Here, the Department contends that the ALJ erred when he lowered the Department’s divestment calculation and found that only transfers made after Appellant’s daughter was added to the account were divestments. The Department argues that despite Appellant’s age and, based on the evidence admitted on the record, the ALJ improperly disregarded several amounts Appellant had given to her daughter in years previous to 2013. Specifically, the Department asserts that the ALJ misapplied policy by accepting less than convincing evidence from Appellant and allowing Appellant to circumvent the requirement to show that the transfers in this case were made exclusively for a purpose other than to qualify for Medicaid.

Appellant, on the other hand, contends that she had a clear pattern of transfers going back several years and that, and that the more recent distributions were also consistent with the established pattern of giving. In support, Appellant provided correspondence from her physician which indicated that she lived independently and was doing well for her age and had no reason to believe that long-term care or waiver services might be needed. (Exhibit 1, pp 1 & 2).

During the hearing, there was testimony that Appellant gave money to her daughter for certain living expenses associated with a divorce, extracurricular expenses (i.e., a soccer team), and other expenses. The record showed that Appellant gave money to her daughter to reimburse her for other expenses including rent and utilities that were paid on Appellant’s behalf.

The correspondence from Appellant’s doctor that indicates that “prior to August 13, 2013, [REDACTED] lived independently and was doing well for her age and had no reason to believe that long-term care or waiver services might be needed.” (Exhibit 1, p. 3) The ALJ indicated in the Hearing Decision why he believed the letter was suspicious as it contained the same language that exists in BEM 405. It is also noteworthy that the letter was drafted on January 14, 2014, which is the same time period Appellant received LTC. In addition, the record contained testimony from Appellant’s daughter that her mother (Appellant), following a fall, was admitted to the hospital in July, 2014.

Although the record showed that the ALJ acknowledged that Appellant provided her daughter with gifts over several years, the record also demonstrated how, on May 10, 2013, Appellant added her daughter to her bank account. (See Exhibit 1 Page 95.)

The ALJ, in the decision, found that from May 10, 2013, going forward, the transfers to Appellant's daughter were not exclusively for a purpose other than to qualify for Medicaid. The ALJ did not explain why the transfers prior to 2013, and up to and including May 10, 2013, were not considered a divestment, while the transactions following May 14, 2013, were a divestment. The ALJ does not point to the record to support how he could have reached this conclusion. The testimony of Appellant's daughter concerning receipt of payments as reimbursement for expenses did not demonstrate that Appellant had no reason to believe long-term care or waiver services might be needed as required by BAM 405 at p. 11. Neither the document record, nor the testimony show that Appellant provided **convincing evidence** that she had no reason to believe LTC or waiver services might be needed. BEM 405, p. 11 (With Emphasis).

Accordingly, the ALJ improperly applied BEM 405, page 12, concerning the Department's instruction 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 Department's initial divestment penalty calculation should stand.

The undersigned finds that the ALJ erred when he found that Claimant provided convincing evidence that they had no reason to believe LTC or waiver services might be needed. In addition, the ALJ did not properly follow policy as the evidence was not convincing that not all of the transactions in the record were divestments.

Motion to Vacate Order Granting Request for Reconsideration

Appellant moves to vacate the Order Granting Request for Reconsideration in this matter because the instant Decision and Order of Reconsideration was not mailed in such a time to allow the Department to implement the hearing decision within 10 days as defined by BAM 600, p 41. Appellant also contends that because Michigan Administrative Code R 792.11013(6), as well as, federal Medicaid law (42 CFR 431.244(f)(1)(ii)), both require administrative action within 90 days, the request for reconsideration and the order granting reconsideration should be null and void because they were beyond the 90 day time period.

The Department filed a Brief in Response to the motion to vacate essentially arguing: (1) that the time limits do not preclude reconsideration; (2) the fact that reconsideration was granted negates the implementation of the previous order; (3) only remedy is to stay the first order or move to expedite reconsideration rather than vacate it.

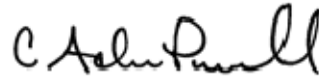
Neither BAM 600, p 41 nor Mich Admin Code R 792.11013(6) specifically provide that an Order Granting Reconsideration must be vacated if the 90 day time limit is not met. The arguments advanced by Appellant are not persuasive. In the absence of policy that requires the Order Granting Reconsideration be vacated under these circumstances, the motion to vacate should be denied.

DECISION AND ORDER

Accordingly, the ALJ of record's Hearing Decision under Registration 14-003057 is **VACATED** and the Department's MA decision concerning the divestment penalty and calculation is **AFFIRMED**.

For the reasons indicated above, the Appellant's Motion to Vacate Order Granting Request for Reconsideration is **DENIED**.

IT IS SO ORDERED.



C. Adam Purnell
Supervising Administrative Law Judge
Michigan Administrative Hearing System
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: 08/21/2015

Date Mailed: 08/21/2015

NOTICE: The law provides that within 30 days of receipt of the this Decision, the Claimant may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

CAP/sw

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