

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

IN THE MATTER OF:

[REDACTED]

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

ADMINISTRATIVE LAW JUDGE: Darryl T. 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 telephone hearing was held on August 19, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant's daughter, [REDACTED], and her attorney, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Hearings Facilitator [REDACTED], Eligibility Specialist [REDACTED], and Assistant Attorney General [REDACTED] represented the Department.

ISSUE

Did the Department properly impose a divestment penalty period on the Claimant?

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 long-term care health coverage on February 26, 2014.
2. Claimant stated in the application that gifts and transfers of assets had been made.
3. Claimant's daughter provided a spreadsheet (Exhibit 1 Pages 8-11) identifying a net total of [REDACTED] that had been transferred from Claimant to her daughter from 2009 through 2013.
4. The Department imposed a divestment penalty of 9.33 months for long-term care coverage, beginning February 1, 2014, and ending November 18, 2014. (Exhibit 1 Page 12.)
5. On May 22, 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.

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 argued that she had established a pattern of giving, going back many years, and that recent transfers were consistent with an established pattern of giving. The testimony was that an undetermined amount was given by Claimant to her daughter to help with the daughter's expenses, such as costs associated with her divorce, costs for her daughter's traveling soccer team, and others living expenses. Other amounts were to reimburse the daughter for expenses she had paid (such as rent and utilities) on behalf of the Claimant.

BEM 405 states: "When 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."

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."

Claimant's position is that these transfers were exclusively for a purpose other than to qualify for MA and, therefore, not a divestment. The Department's position is that the money transferred from the Claimant to her daughter was at least in part to qualify for MA and, therefore, a divestment.

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. Claimant presented a letter from her doctor 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." It is interesting that the language used in the doctor's note (Exhibit 1 Page 3) is identical to the language in BEM 405. The doctor's note was written on January 14, 2014, while Claimant was receiving care in an institution. It conflicts with testimony from the daughter that Claimant was hospitalized in July 2013 after suffering an "unwitnessed fall" at her home. It is perplexing that a doctor would state that his patient was "doing well" when she had to be hospitalized for an unwitnessed fall. Particularly when she experienced another "unwitnessed fall" in August 2013 and wound up in the hospital again, followed by a stay in a rehab setting.

The Department has presented evidence of substantial gifts from Claimant to her daughter over several years. The Claimant's attorney and daughter presented evidence that some of the payments to the daughter were to reimburse her for expenses. On May 10, 2013, Claimant added her daughter to her account at [REDACTED]. (Exhibit 1 Page 95.) Beginning May 14, 2013, every transaction in the spreadsheet is a "transfer to" the daughter. At that point, the daughter had the ability to control Claimant's account; and she could transfer as much money as she wanted, as frequently as she wanted. That level of control, combined with the fact that Claimant was hospitalized weeks later, leads the undersigned to the conclusion that transfers from that point forward were gifts. That is particularly true considering the transfers increased from [REDACTED] in 2011 to [REDACTED] in 2012, and then to [REDACTED] in 2013. Although there might have been a history of generosity between Claimant and her daughter, the 2013 transactions far surpassed the generosity demonstrated in the four prior years combined. From May 10, 2013 onward, the undersigned is persuaded that the transfers were not exclusively for a purpose other than to qualify for MA.

Little weight is given to the doctor's statement. It was written several months after the fact and is inconsistent with the daughter's testimony that the Claimant was not considered safe living on her own. The doctor did not testify, so little weight can be given to his statement that she "was doing well for her age." Who knows what that means for an 85-year-old woman?

The parties stipulated that the numbers used in the spreadsheet were accurate. The transfers for years prior to 2013 are not considered to be a divestment. The transfers in 2013, up to and including the May 10, 2013, transfer, are not considered a divestment. The transactions beginning May 14, 2013, excepting those identified as being deducted from the total divestment on page 11 of Exhibit 1, were a divestment.

Total transfers in 2013 were [REDACTED]. The transactions identified in the box on page 11 total [REDACTED]. The 2013 transactions that preceded May 13, 2013 total [REDACTED]. The total of the transactions that constitute a divestment equal [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 [REDACTED]. When the [REDACTED] is divided by [REDACTED], it results in a penalty period of 4.12 months, or 4 months and 3 days.

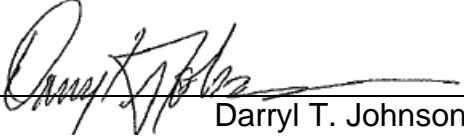
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it imposed a penalty period of 9.33 months for Claimant's long-term care coverage.

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

Date Signed: **8/21/2014**

Date Mailed: **8/21/2014**

DTJ / 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:

