

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-004208
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: September 2, 2014
County: LIVINGSTON

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 three-way telephone hearing was held on September 2, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant's attorneys, [REDACTED], [REDACTED], and Certified Public Accountant [REDACTED]. Her son, [REDACTED] was present but did not participate. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialists [REDACTED], [REDACTED], and Assistance Payments Supervisor [REDACTED]. Assistant Attorney General [REDACTED] represented the Department.

ISSUE

Did the Department properly determine the divestment penalty period applicable to 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. On November 7, 2013, Administrative Law Judge Gary Heisler conducted a hearing on Claimant's prior hearing request.
2. In a Hearing Decision dated November 25, 2013, ALJ Heisler ordered the Department to Redetermine Claimant's MA eligibility, after finding that the Department erroneously imposed a divestment penalty based upon the total value of an [REDACTED] account which Claimant owned jointly with her son.
3. On December 9, 2013, the Department mailed to Claimant's attorney a letter "requesting proof of disposition of (Claimant's) share of [REDACTED] account . . ."

4. On January 2, 2014, and then on February 28, 2014, the Department received from Claimant's attorney correspondence and exhibits explaining how the funds were disposed.
5. On February 25, 2014, the Department mailed a Notice of Case Action (NCA) determining [REDACTED] was determined to be divested, creating a divestment period from April 1, 2014, to November 30, 2014.
6. On May 26, 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.

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."

As explained in ALJ Heisler's decision,

"BEM 400 page 14 lists cash assets as: Money/currency; Uncashed checks, drafts and warrants; Checking and draft accounts; Savings and share accounts; Money market accounts; [REDACTED] patient trust fund and all other money held by the facility for the patient; Money held by others; and Time deposits. The jointly owned [REDACTED] is not a cash account.

"BEM 400 page 25 lists retirement plans as: Individual retirement accounts (IRAs); Keogh plans (also called H.R. 10 plans); 401k plans; Deferred compensation; Pension plans; and Annuities-- An annuity is a written contract establishing a right to receive specified, periodic payments for life or for a term of years. The jointly owned [REDACTED] [REDACTED] is not a retirement plan.

"In accordance with BEM 400 pages 10-12, the jointly owned [REDACTED] [REDACTED] is an 'other joint asset.' The policy directs 'count an equal share for each owner'."

The original value of the account was determined by the Department to be [REDACTED]. In a letter dated [REDACTED], from her attorney (Exhibit 1 Page 5), he "intended to . . . explain the disposition of (Claimant's) one-half share of [REDACTED] . . ." Following the hearing, the attorney was allowed to submit a packet of documents which were admitted as Exhibit A. In his "Response to Verification Request," which he submitted to the Department on January 2, 2014, he asserted "The amount withdrawn from (her) investment accounts during the five-year look-back period was [REDACTED]." Then, he asserted that [REDACTED] of that amount belonged to her son, leaving a balance of divested assets at [REDACTED], of which the half that would be counted as a divestment was [REDACTED]. Inasmuch as his letter of February 17, 2014, concedes that the amount at issue is [REDACTED] that is the amount that is accepted as the amount from which the analysis regarding divestment will begin. One-half of that is [REDACTED].

During the hearing, the Claimant's counsel and witness testified that a number of transactions in and out of the [REDACTED] account were a "wash" meaning that they were just transfers within sub-accounts. Beginning at page 89 of Exhibit 1 is a spreadsheet where those transactions are referred to as "non-transactions." That spreadsheet also documents [REDACTED] in funds that were spent on Claimant's behalf.

Page 41 of Exhibit 1 is another spreadsheet that explains the flow of money in and out of the [REDACTED] account. There is a significant inconsistency between this spreadsheet and the spreadsheet that begins at page 89. At page 91 it identifies a transaction from February 17, 2011, where [REDACTED] was transferred to another account, and allegedly [REDACTED] was returned to the [REDACTED] Account. A review of the account statement for that month (Exhibit 1 Pages 102-103) does not show such a transfer out. Nor does the spreadsheet at page 41.

The spreadsheet at page 41 lists assets added to the account of [REDACTED]. The account had income of [REDACTED]. The net change in value (due to increases and

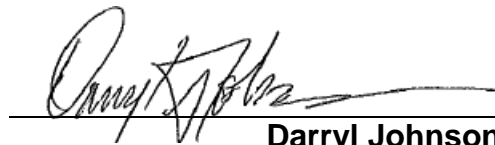
decreases in share values) over the period of time was [REDACTED]. To summarize, between deposits and what might be termed growth, [REDACTED] was added to the account. The ending value as of January 25, 2013, was [REDACTED]. The total assets withdrawn from the account amounted to [REDACTED]. It does not seem to be any coincidence that the "Assets withdrawn from account" equaled the amount the Department used as the value of the account.

The conclusion to be reached is that the account had an overall value of [REDACTED]. Because it was a joint account, Claimant's share was [REDACTED]. The Claimant has submitted evidence that [REDACTED] of her share was used for her benefit. That leaves [REDACTED] that was divested. It was also acknowledged (Exhibit 1 Page 6) that Claimant's son received [REDACTED] more than his one-half of the total account value. That [REDACTED] will be added to the divestment. The sum of all of the divestments, and the amount upon which the divestment penalty will be imposed, is [REDACTED]. That is the amount used by the Department in the Notice of Case Action (Exhibit 1 Pages 106-107) dated February 25, 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 acted in accordance with Department policy when it calculated the amount of the total divestment.

DECISION AND ORDER

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



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

Date Signed: **9/23/2014**

Date Mailed: **9/23/2014**

DJ/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:

