

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-006155
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: October 22, 2014
County: INGHAM

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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, an in-person hearing was held on October 22, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant's Attorney [REDACTED] and witnesses [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Eligibility Specialist, [REDACTED] Office of Inspector General and [REDACTED] Assistant Attorney General.

ISSUE

Did the Department properly determine that divestment occurred?

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 has been a Medicaid recipient since May 2013.
2. In April 2014, Claimant's failure to disclose the sale of real estate properties was discovered by the Department.
3. On June 11, 2014, the Department issued a notice of case action alleging divestment of [REDACTED] and imposed a 15-month-and-6-days divestment penalty.
4. Claimant requested hearing on June 23, 2014, disputing the finding of divestment and imposition of divestment penalty.
5. Claimant sold parcels of real estate on October 20, 2008; July 20, 2010; September 28, 2011; and November 16, 2012.

6. The parcels sold were sold for fair market value. The parcels were sold on the open market, voluntarily, in the interest of the buyer and seller. The sales were made to non-related individuals with equal bargaining power.

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.

MA ONLY

Divestment results in a penalty period in MA, **not** ineligibility. Divestment policy does **not** apply to Qualified Working Individuals; see BEM 169.

Divestment is a type of transfer of a resource and not an amount of resources transferred.

Divestment means a transfer of a resource (see RESOURCE DEFINED below and in glossary) by a client or his spouse that are all of the following:

- Is within a specified time; see LOOK-BACK PERIOD in this item.
- Is a transfer for LESS THAN FAIR MARKET VALUE; see definition in glossary. BEM 405

FAIR MARKET VALUE

The amount of money the owner would receive in the local area for his asset (or his interest in an asset) if the asset (or his interest in the asset) was sold on short notice, possibly without the opportunity to realize the full potential of the investment. That is, what the owner would receive and a buyer be willing to pay on the open market and in an arm length transaction. See definition in this glossary.

LESS THAN FAIR MARKET VALUE

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. BEM 405

Real Property and Mobile Home Value

FIP, SDA, RCA, SSI-Related MA Only and FAP

To determine the fair market value of real property and mobile homes use:

Deed, mortgage, purchase agreement or contract.

State Equalized Value (SEV) on current property tax records multiplied by two.

- Statement of real estate agent or financial institution.
- Attorney or court records.
- County records. BEM 400

Additionally, Claimant sold parcels of real estate for fair market value between 2008 and 2012. These sales were made for fair market value. The sales were made on the open market, voluntarily to non-related individuals. Therefore, these sales were not divestment. BPG GLOSSARY

The Department argued at hearing that the real estate sales were made for less than fair market value and this constituted divestment. The Department pointed out that all the sales were below the taxable value. Department policy points to taxable value as one means of determining the value of real estate. BEM 400 An actual sale on the open market is a much more accurate determination of fair market value. Department policy does not require that any of the methods of determining value delineated in policy be used. BEM 400 The definition of fair market value in the glossary does make specific mention of “what the owner would receive and a buyer would be willing to pay on the open market in an arm length transaction”. All the sales in question fall under this definition. This Administrative Law Judge finds that the four real estate sales were made for fair market value and thus were not divestment. BEM 405

It is understandable why the Department gave increased scrutiny to these sales, because the Claimant failed to disclose them on her initial application. However, Claimant, her ex-husband and the sellers agreed that the purchase prices were fair. The real estate agents who testified at hearing provided credible testimony that the purchases were voluntary and that the prices were agreed to after arm’s length negotiations between the buyers and sellers. The agents gave specific testimony that the purchases were for fair market value and that they had a fiduciary responsibility to act on Claimant’s and her ex-husband’s behalf. The agents also gave insightful testimony that 2 times taxable value was not always an accurate measure of fair market value and that sales prices were frequently below 2 times taxable value, especially in the difficult real estate markets where the purchases in question were made between 2008 and 2012. It should also be noted that these sales were fairly remote in relation to Claimant’s application for Medicaid, and there was no evidence that the sales were made in an effort to ensure Claimant’s eligibility for Medicaid. In fact, since the sales were made sporadically, there is some indication that the sales were made for other reasons and that the sales could potentially have been characterized as “made for another purpose” and thus not be considered divestment under BEM 405.

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 that divestment occurred and imposed divestment penalty.

DECISION AND ORDER

Accordingly, the Department's decision 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. Reinstate MA-LTC coverage for the Claimant.
2. Remove the divestment penalty.



Aaron McClintic
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **10/31/2014**

Date Mailed: **10/31/2014**

AM / 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:

