

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-009041
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: October 21, 2014
County: Wayne-District 82

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 October 21, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly determine that a divestment penalty applies to the Claimant's Long Term Care (LTC) 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 applied for Medical Assistance (MA) on May 23, 2010, and the Department approved her application.
2. On the May 23, 2010, application indicates that no listed assets have been sold, given away, or transferred.
3. On April 21, 2014, the Claimant's representative reported to the Department that real estate previously owned by the Claimant had been sold.
4. On July 25, 2014, the Department notified the Claimant that a divestment penalty would apply against the Claimant's Long Term Care (LTC) from September 1, 2014, through March 18, 2015.
5. On August 7, 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 are all of the following:

- Is within the look-back period,
- Is a transfer for less than fair market value,
- Is not a transfer excluded by policy. Department of Human Services Bridges Eligibility Manual (BEM) 405 (July 1, 2014), pp 1-22.

Divestment is a type of transfer of a resource, not an amount of resources transferred, and results in a penalty period in Medical Assistance (MA), not ineligibility. Transferring a resource means giving up all or partial ownership in (or rights to) a resource. BEM 405.

The Department will treat transfers by any of the following as transfers by the client or spouse.

- Parent for minor.
- Legal guardian.
- Conservator.
- Court or administrative body.
- Anyone acting in place of, on behalf of, at the request of or at the direction of the client or the client's spouse. BEM 405

On April 21, 2014, the Claimant's representative reported to the Department that real estate owned by the Claimant before she was approved for Medical Assistance (MA) had been sold. Based on this previously unreported transfer, the Department determined that the Claimant had transferred ownership or a resource for less than fair market value within 60 months of becoming eligible for Medical Assistance (MA)

benefits. The Department then enacted a divestment penalty from [REDACTED] through [REDACTED].

The Department presented substantial evidence that the Claimant transferred the property to her children by quit claim deed on [REDACTED], in consideration of [REDACTED].


The Claimant's representative did not dispute the amount of the transfer, but argued that that the transfer was not a divestment, and that the transfer of the Claimant's real estate asset should not be counted toward her Medical Assistance (MA) benefits.

The asset that was transferred had been the Claimant's primary residence in the past, and was excluded as a countable asset. The transfer of an excluded asset is not an excluded transfer unless it is transferred into another excluded asset. In this case, the property was transferred to the Claimant's children by quit claim deed, and later sold at fair market value. Therefore, the transfer of the property to the Claimant's children was a divestment.

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 applied a divestment penalty to 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: **10/29/2014**

Date Mailed: **10/29/2014**

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:

