

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-016148
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: January 28, 2015
County: Oakland (03)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 January 28, 2015, from Detroit, Michigan. Participants on behalf of Claimant included [REDACTED], Claimant's son; [REDACTED] Claimant's authorized hearing representative (AHR) and legal counsel, and [REDACTED]. Participants on behalf of the Department of Human Services (DHS) included Heather Hembree, hearings facilitator, [REDACTED], specialist, and [REDACTED] specialist.

ISSUES

The issue is whether DHS properly imposed a divestment penalty upon Claimant's Medical Assistance (MA) eligibility.

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 was an ongoing Medicaid recipient.
2. Claimant was an ongoing resident of a long-term-care facility.
3. On [REDACTED], Claimant's son sold Claimant's home for \$70,000, despite an appraised value of \$85,000 for the home.
4. On [REDACTED], Claimant received title of her son's vehicle after paying \$9,246 to pay the remaining balance owed on the vehicle.

5. On [REDACTED], DHS imposed a divestment penalty on Claimant's MA eligibility from [REDACTED] through [REDACTED] and mailed a Benefit Notice (Exhibit 1) informing Claimant of the penalty.
6. On [REDACTED], Claimant's AHR requested a hearing to dispute the divestment penalty.

CONCLUSIONS OF LAW

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. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

Prior to a substantive analysis, a procedural issue should be noted. At the outset of the hearing, DHS requested an adjournment so that legal counsel could be obtained. DHS testimony indicated that adjournment requests are routinely made when a client is represented at a hearing by an attorney. DHS was asked why legal counsel was not procured before the hearing; DHS could not provide any excuse. There was no evidence that DHS had improper notice of Claimant's legal representation. The adjournment request by DHS was denied, primarily because of DHS' failure to provide good cause for obtaining legal representation before the hearing.

Claimant's AHR requested a hearing to dispute a divestment penalty on Claimant's MA eligibility for the period of [REDACTED] through [REDACTED]. DHS policy defines divestment and outlines its requirements.

Divestment is a type of transfer of a resource and not an amount of resources transferred. BEM 405 (7/2014), p. 1. Divestment means a transfer of a resource by a client or his spouse that are all of the following:

- is within a specified time; and
- is a transfer for less than fair market value; and
- is not listed under "TRANSFERS THAT ARE NOT DIVESTMENT".

Id.

Divestment results in a penalty period, not MA program ineligibility. *Id.* During the penalty period, MA will not pay the client's cost for: long-term-care (LTC) services,

home and community-based services, home help or home health. *Id.* MA will pay for other MA-covered services. *Id.*

It was not disputed that Claimant was an LTC facility resident. It was not disputed that DHS imposed a divestment penalty based on two different assets transfers. One transfer related to monies spent on Claimant's son's vehicle. The second transfer related to a sale of a home for allegedly less than market value. DHS alleged that both transfers were for less than fair market value.

It was not disputed that Claimant's son was a vehicle owner. It was not disputed that Claimant's son, as of 7/2014, owed a balance of \$9,246 on his vehicle. It was not disputed that Claimant's mother paid the balance on Claimant's vehicle resulting in a title transfer to Claimant on [REDACTED] (see Exhibits 101 and 105).

Claimant's son and Claimant's attorney both conceded that Claimant's purchase of his vehicle was not a transfer motivated by Claimant's need for a vehicle. The transaction was done primarily so that Claimant's mother could pay-off her son's car debt. DHS seemed to contend that a divestment penalty is proper for such unnatural transfers of assets.

The evidence established that Claimant bought a car for \$9,246, a reasonable vehicle purchase vehicle price. DHS did not provide any evidence that Claimant's purchase was made for less than fair market value. If a transaction was not for less than fair market value, there cannot be divestment

It is found that DHS improperly imposed a divestment penalty on Claimant concerning \$9,246 in proceeds from a vehicle purchase. An analysis must continue to consider the divestment penalty imposed relating to the sale of Claimant's home.

DHS alleged that Claimant's son sold Claimant's home for less than fair market value. It was not disputed that the state equalized value of the home was \$78,300. It is understood that a house's value is generally the equivalent of twice the SEV. DHS alleged that the home's sale price of \$70,000 was a divestment because the price was for significantly 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. BEM 405 (7/2014), p. 6. 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. *Id.*

An arms-length transaction is one between two parties who are not related and who are presumed to have roughly equal bargaining power. Bridges Program Glossary (7/2014), p. 6. It consists of all the following three elements: it is voluntary, each party is acting in their own self-interest, and it is on an open market. *Id.*

Presumably, DHS concluded that a \$70,000 sale price on a home valued by the State of Michigan to be worth \$156,600 was suspiciously low and worthy of a divestment penalty. Given the large difference between purchase price and the doubled SEV value, suspicion was merited.

Claimant's son responded that the sale of his mother's home was for fair market value, given the conditions of the home. Claimant testified that his senior mother and two brothers lived in his mother's home before her LTC residency. Claimant's testimony implied that his brothers and aged mother did not excel in the upkeep of the house. Claimant also testified that the house suffered a fire some years ago and the repair work performed by his brothers was shoddy.

Claimant supported his testimony with photographs (Exhibits 41-54) demonstrating the home's subpar condition. The photographs appeared to show a kitchen floor made of peg board, semi-repaired ceilings, a door (allegedly the furnace door) covered with dust and hair, and a wall with mold. The black and white photographs tended to support Claimant's testimony.

Claimant also presented an appraisal (Exhibits 55-68) dated [REDACTED]. The appraisal noted that the kitchen was gutted, water was draining into the home which affected the ductwork, the roof and gutters required replacing, and the furnace needed updating. The appraised value of the home was \$85,000.

Claimant also presented an invoice (Exhibit 106) dated [REDACTED] from a company that performed work on the home prior to the home's sale. The invoice billed Claimant for the following services, among others: removing 36 construction sized garbage bags of trash, removing walls in "very bad" condition, removing living room flooring and paneling, dismantling a shed, and removing dead and overgrown shrubs.

The evidence presented by Claimant was compelling proof that Claimant sold the home for a fair market value despite a SEV larger than the purchase price. Other than the low purchase price, which was justified given the home's poor condition, there was no evidence to suggest that the home's sale was suspicious. It is found that the Claimant's mother's home was worth no more than the appraised value of \$85,000.

Claimant was willing to concede a divestment penalty for the difference between the home sale price (\$70,000) and appraised value (\$85,000). Despite the concession, an analysis is appropriate to determine if the concession was justified.

Claimant's son testified that he took the first offer on the home within a few days after listing the home for sale. Claimant's son's rush to sell the home suggested that he may have undersold his mother's house.

The presented appraisal stated that the estimated cost of repairs was noted to be \$90,400 (see Exhibit 56). Any house needing \$90,400 in repairs could be reasonably

expected to sell for less than appraised value. It is theoretically possible that Claimant's home

Claimant's son credibly testified that he was anxious to the sell the home because he was tired of dealing with the house. Peace of mind is a sensible motivation for Claimant's son's actions. This consideration supports finding that Claimant sold the home at an arm's length transaction.

Though Claimant's son's acceptance of a sale offer was quick, the home was offered on the open market. There is no evidence that Claimant's son was motivated by an underhanded motive in accepting a \$70,000 offer. Accordingly, it is found that Claimant's son accepted fair market value for his mother's home, and therefore, there was no divestment.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly imposed a divestment penalty on Claimant's MA eligibility. It is ordered that DHS remove the divestment penalty imposed on Claimant from [REDACTED] through [REDACTED]. The actions taken by DHS are **REVERSED**.



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/6/2015**

Date Mailed: **2/6/2015**

CG / hw

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 48909-8139

CC:

