

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-016385
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: February 10, 2015
County: MARQUETTE

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 four-way telephone hearing was held on February 10, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Claimant's son and attorney-in-fact, [REDACTED]. She was represented by her attorney, [REDACTED]. [REDACTED] legal secretary observed the hearing. Participants on behalf of the Department of Human Services (Department) included Assistance Payments Supervisor [REDACTED] and Eligibility Specialist [REDACTED]. Assistant Attorney General [REDACTED] represented the Department.

ISSUE

Due to excess assets, did the Department properly determine a divestment penalty on Claimant's Medical Assistance (MA)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, including the testimony at the hearing, finds as material fact:

1. Claimant applied for MA benefits on September 3, 2014.
2. On October 3, 2014, the Department sent Claimant's Authorized Representative (AR) its decision informing Claimant that she was approved for MA, subject to a divestment penalty from September 1, 2014, to November 16, 2014.

3. In [REDACTED], 130 shares of [REDACTED] stock were sold from an [REDACTED] investment account that was owned jointly by Claimant and her daughter. Each of the joint owners received \$ [REDACTED] (less fees) from the sale.
4. Claimant liquidated life insurance policies and received the cash value from those policies.
5. Following the advice of the [REDACTED], Claimant purchased a vehicle on [REDACTED], with a purchase price of \$ [REDACTED] plus various charges. For her down payment she used \$ [REDACTED] in cash, and because she was unable to obtain credit on her own, her son co-signed the loan for the balance.
6. Because he co-signed the loan, the dealership applied for title listing Claimant and her son as joint owners.
7. The Department determined there was a divestment of \$ [REDACTED] because of the proceeds from the [REDACTED] stock that were paid to Claimant's daughter, and a divestment of the \$ [REDACTED] used as a down payment for the vehicle that was placed jointly in her name with her son.
8. The Department imposed a penalty period based upon the average monthly cost for long-term care of \$ [REDACTED] per month which, when divided into the divestment of \$ [REDACTED] equals 2.54 months.
9. On November 13, 2014, Claimant's attorney filed a hearing request, protesting the Department's actions.

CONCLUSIONS OF LAW

Department policies are found 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 (7/1/14), 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 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 2.54 months, or 2 months and 16 days. That is the penalty period the Department imposed.

The disputes here are whether the Department properly imposed a penalty period for the sale of the Wal-Mart stock where one-half of the proceeds went to the daughter, and whether the Department properly imposed a penalty for the \$ [REDACTED] that was paid toward the vehicle which was then put in the Claimant's name along with her son's.

Evidence was presented that, as far back as [REDACTED] Claimant and her daughter were the joint owners of the [REDACTED] stock. Exhibit A Page 47 is a copy of a statement showing the two owned [REDACTED] shares of stock as of [REDACTED], with each share valued at \$ [REDACTED]. Evidence was also presented that Claimant would let any dividends be used to purchase more stock. Exhibit A Page 30 is evidence that the [REDACTED] account was jointly owned by Claimant and her daughter. As of [REDACTED], the account held [REDACTED] shares, at \$ [REDACTED] per share. The value at that date was \$ [REDACTED].

Claimant did not testify. Neither did her daughter. Claimant's son testified that the stock had always been jointly owned to his knowledge. He does not know if there were stock splits or new stock purchases that increased the number of shares from [REDACTED] to [REDACTED]. Nonetheless, the evidence is persuasive that Claimant and her daughter jointly owned the stock for more than 20 years. The Department presented no evidence that the increased value of the stock was because of anything other than reinvested dividends. There was no evidence that Claimant gave to her daughter anything more than the present value of the stock that had been jointly owned by them since prior to the look-back period.

BEM 405 at page 3 discusses jointly owned assets. "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." Here, BEM 400 (1/1/15) at 12 instructs the Department to count an equal share for each co-owner. Therefore, the Department should have counted one-half of the [REDACTED] stock as the Claimant's, and the other one-half as the daughter's. Because the daughter received only her one-half, there was no divestment with respect to the stock.

The issue concerning the truck is more complex. Claimant's son testified that he helped his mother to buy a vehicle because that was an exempt asset. BEM 400 at 38 directs the Department to exclude one motorized vehicle owned by the asset group. BEM 405 at 10 notes that a divestment does not occur when an asset is converted from one form to another of equal value. It provides an example that, using \$ [REDACTED] from savings to buy a used car priced at \$ [REDACTED] is conversion for equal value. Claimant used \$ [REDACTED] of her savings toward the purchase of a car. Her son co-signed the loan, making him responsible for the remaining \$ [REDACTED] due on the loan. He testified that he did not need the car. The car was sold sometime after Claimant entered the nursing home, and the net proceeds of approximately \$ [REDACTED] were paid toward her care.

At page 3 of BEM 405 policy considers joint owners and transfers. See policy cited above. An example is given of [REDACTED] applying for MA. In 2005 he added his sister's name to his bank account. Each is free to withdraw as much money as desired, so adding the sister's name did not affect the client's ownership or control. In [REDACTED] the sister withdrew \$ [REDACTED] and deposited the money in her own bank account. [REDACTED] is considered to have transferred the \$ [REDACTED] at the time of the withdrawal, when he no longer had ownership and control of his money.

In this case, Claimant bought the vehicle in [REDACTED] and her son's name was put on the title. Evidence was submitted that he was not intended to be on the title, but that is how title was held nonetheless. However, the evidence is also persuasive that adding his name to the title did not affect Claimant's ownership and control, particularly considering the fact that the vehicle was sold after she entered long-term care, and the money received from the sale was used for her care.

The Administrative Law Judge, based upon 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 on Claimant.

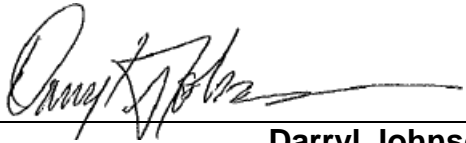
DECISION AND ORDER

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. Redetermine Claimant's eligibility for MA as of the September 3, 2014, application, without counting as a divestment the payment of any portion of the proceeds from the [REDACTED] stock, or the purchase of the vehicle.

2. Provide Claimant with MA benefits that she is otherwise eligible to receive.



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/13/2015**

Date Mailed: **2/13/2015**

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 48909-8139

cc:

