

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201413757
Issue No(s): 2008
Case No.: [REDACTED]
Hearing Date: January 16, 2014
County: Branch

ADMINISTRATIVE LAW JUDGE: MICHAEL S. NEWELL

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 16, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], E.S.

ISSUE

Did the Department properly apply the divestment period at issue?

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 material facts of this case are undisputed.
2. On January 4, 2012, Claimant withdrew money from his bank account, of which \$ [REDACTED] are not accounted for and cannot be accounted for.
3. In June 2012, Claimant entered assisted living and paid for his care expenses from his personal assets.
4. On September 16, 2013, Claimant applied for long-term care.
5. On October 21, 2013, the Department issued a Notice of Case Action approving Claimant effective September 1, 2013 with a co-pay of \$ [REDACTED] but subject to divestment penalty from September 1, 2013 through November 30, 2013 due to the unaccounted for \$ [REDACTED].
6. On November 19, 2013, Claimant requested hearing.

7. At the time of the hearing, none of Claimant's family members knew what happened with the money, and Claimant had not been in a condition to provide such information for some time.

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).

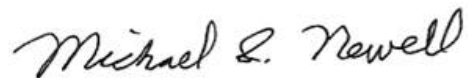
The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

Additionally, BEM 405 requires the Department to apply a look back divestment period for Claimant's because he is MA eligible and was in a long-term care facility at the time of application. There is no dispute that the withdrawal occurred within the look back period, and it did occur during the look back period. See BEM 405 page 5. Without any explanation for the withdrawal, the transfer is presumed a divestment. The Department applied a divestment period of three months. BEM 405 p 12 authorizes a divestment period of 3.5 months in this case.

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 the divestment period at issue.

DECISION AND ORDER

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



Michael S. Newell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 7, 2014

Date Mailed: February 7, 2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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

MSN/las

cc:

