

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014189
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: November 21, 2013
County: Ottawa

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 November 21, 2013, from Lansing, Michigan. Claimant was represented by her attorney [REDACTED]. Participants on behalf of the Department of Human Services (Department) included AAG [REDACTED], Program Manager [REDACTED] and ES [REDACTED].

ISSUE

Did the Department properly determine a divestment penalty of Claimant's Medical Assistance (MA) 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. On May 17, 2013, a Medical Assistance (MA) application was submitted on behalf of Claimant.
2. On August 2, 2013, the Michigan Department of Human Services Office of Legal Services/Trust and Annuities Unit issued a memorandum of their evaluation of Claimant and his spouses' Revocable Living Trust Agreement dated October 22, 2010; a separate Revocable Trust dated March 10, 2011, in Claimant's name; and a marital agreement dated March 10, 2011, between Claimant and his spouse.
3. On August 15, 2013, Claimant was sent a Notice of Case Action (DHS-1605) which stated he was approved for Medical Assistance (MA) but had a divestment penalty period from April 1, 2013, through January 22, 2014.

4. On September 16, 2013, a request for hearing was submitted naming Attorney Goeman as authorized hearing representative.

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.

Admission of evidence during an Administrative Law Hearing on Department of Human Services' matters is not strictly governed by the Michigan Rules of Evidence. In accordance with the Michigan Administrative Procedures Act, an Administrative Law Judge may admit and give probative effect to any evidence. However, the final decision and order must be supported by and in accordance with competent, material, and substantial evidence.

During this hearing Attorney [REDACTED] objected to the August 2, 2013, Michigan Department of Human Services Office of Legal Services/Trust and Annuities Unit memorandum as hearsay. The Department asserted that the memorandum is admissible under Rule 803 Hearsay Exceptions; Availability of Declarant Immaterial section (6) Records of regularly conducted activity.

The Department carries the initial burden of going forward with evidence showing that it acted in accordance with Department policy. The memorandum provides a brief explanation of the Department's reason for determining whether or not transfers of assets are a divestment. The memorandum was prepared as a summary of the analysis done by a Department employee who was required to read all six pages of the marital agreement, all 14 pages of the Living Trust Agreement dated October 22, 2010, and all 14 pages of the Revocable Trust dated March 10, 2011. Submission of the memorandum is a starting point.

Claimant has the right to present evidence and arguments in support of their position. If and when Claimant presents evidence and arguments which negate or refute the Department's position; the Department still has the burden of showing that it acted in accordance with Department policy. That does not mean that the Administrative Law Judge has the responsibility to read through all the instruments and look for clauses or language to prove the Department's position. That means someone from the Department needs to be present who can actually address Claimant's arguments and provide an in depth explanation of the Department's position. There was no one present

at this hearing that was prepared to explain the application of Department policy to the two trusts and marital agreement used in calculating a divestment penalty. The Department was not prepared to go forward with this hearing.

If no relevant or cogent arguments are presented by Claimant, then submitting an undisputed memorandum from the Michigan Department of Human Services Office of Legal Services/Trust and Annuities Unit, pages from Department policy, and the instruments at issue in a hearing, might meet the Department's burden of persuasion. In all other circumstances explanatory testimony is required evidence to meet the burden of persuasion. If there is no one present from the Department who can provide explanatory testimony as evidence, the Department has not met its evidentiary burden of going forward.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determine a divestment penalty of Claimant's Medical Assistance (MA) benefits.

DECISION AND ORDER

Accordingly, the Department's decision of August 15, 2013, is **REVERSED**. Nothing in this decision and order should be construed as a finding or determination that the transfer of Claimant's assets was not a divestment. The application of the divestment penalty period described in the August 15, 2013, Notice of Case Action (DHS-1605) is reversed because the Department did not meet the required evidentiary burden for this hearing.

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. Vacate the April 1, 2013, through January 22, 2014, divestment penalty period.
2. Continue to process Claimant's case and determine his eligibility in accordance with Department policy.

/s/
Gary F. Heisler
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 12/11/2013

Date Mailed: 12/11/2013

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

GFH/sw

cc:

