

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201422767
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: March 5, 2014
County: Ottawa County DHS

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 March 5, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] as attorney for the Claimant, along with witnesses [REDACTED] and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Assistance Attorney General [REDACTED] representing the Department, [REDACTED] of the Department's Office of Legal Services, and [REDACTED] and [REDACTED] as witnesses for the Department.

During the hearing, the Department entered 101 pages of exhibits into the record in addition to a Department Summary For Hearing prepared by Assistance Attorney General [REDACTED] which contains references to Department policy. No additional records were offered on behalf of the Claimant, but a Memorandum of Law was presented by [REDACTED]. All of the evidence presented during the hearing was found to be relevant to the issue at hand, and was entered into the record for the reasons stated on the record.

ISSUE

Whether the Department of Human Services (Department) properly determined that a divestment penalty should apply to the Claimant's long term care Medical Assistance (M.A.) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On March 10, 2011, the Claimant and his spouse executed a Waiver Of Spousal Rights agreement in which he waived his rights to a revocable trust executed on October 22, 2010

2. On April 26, 2013, the Claimant's spouse died.
3. The Claimant applied for Medical Assistance (M.A.) and requested long term care on May 16, 2013.
4. On November 21, 2013, Administrative Law Judge Gary Heisler of the Michigan Administrative Hearing System issued an order reversing the Department's implementation of an August 15, 2013, eligibility determination where a divestment penalty was imposed on the Claimant's Medical Assistance (M.A.) benefits.
5. On January 2, 2014, the Department's Office of Legal Services determined that divestment had occurred within the relevant period with respect to the Claimant's May 17, 2013, application for Medical Assistance (M.A.).
6. On January 14, 2014, the Department notified the Claimant that a divestment penalty from May 1, 2013, through July 3, 2013, would apply to the Claimant's Medical Assistance (M.A.) request for long term care Medical Assistance (M.A.).
7. The Department received the Claimant's request for a hearing on January 16, 2014, protesting the application of a divestment penalty.

CONCLUSIONS OF LAW

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.

Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

MAHS may grant a hearing about any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.

- For FAP only, the current level of benefits or denial of expedited service. Department of Human Services Bridges Administrative Manual (BAM) 600 (March 1, 2014), p 4.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (March 1, 2014), p. 6, provides in relevant part as follows:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days. [Emphasis added.]

On January 14, 2014, the Department sent the Claimant notice that it had applied a divestment penalty to the Claimant's request for long term care. The Department received the Claimant's request for a hearing on January 16, 2014, protesting the application of the divestment penalty. The Claimant's request for a hearing fits the definition of a denial of benefits and falls within the jurisdiction of the Michigan Administrative Hearing System.

The Claimant's attorney argued that the Department's January 14, 2014, eligibility determination is improper because that issue had already been settled by an order issued by Administrative Law Judge [REDACTED] on November 21, 2013.

It is not disputed that the Department has failed to appeal the hearing decision issued on November 21, 2013.

When a benefit eligibility determination is appealed to the Michigan Administrative Hearing System, it is the Department that has the burden to establish that it was acting in accordance with its policies and administrative regulations. On November 21, 2013, it was the determination of Administrative Law Judge Gary Heisler that the Department had failed to meet its burden, and failed to present sufficient evidence to establish that it had properly applied a divestment penalty to the Claimant's circumstances. The Administrative Law Judge ordered the Department to vacate the divestment penalty and determine his eligibility for benefits in accordance with Department policy.

The Department's Director has appointed the Michigan Administrative Hearing System, an independent and autonomous agency within the Michigan Department of Licensing and Regulatory Affairs, as the hearing authority to hear and issue final decisions in individual public assistance and services contested cases pursuant to MCL 400.734c and MCL 33.20173b.

Therefore, it is not within the authority of the Michigan Administrative Hearing System to issue eligibility determinations. It is the Department's responsibility to make eligibility determinations, and the Michigan Administrative Hearing System has been granted the authority to make final decisions on appeals of those eligibility decisions on behalf of the Department as outlined in Bridges Administrative Manual Item 600.

During the March 5, 2014, hearing, the Department expressed confusion as to the meaning of Administrative Law Judge Gary Heisler's November 21, 2013, order and its explanation of what he was not finding in his decision. The November 21, 2013, order expressly indicates that there was no finding that a divestment penalty had not occurred, but merely that the Department had failed to establish that it had implemented a divestment penalty. The Administrative Law Judge ordered that the Department determine the Claimant's eligibility for benefits in accordance with policy.

This Administrative Law Judge finds that the November 21, 2013, order was a proper application of the authority of the Michigan Administrative Hearing System. The Department properly executed the November 21, 2013, order and made a determination of the Claimant's eligibility for long term care Medical Assistance (M.A.) benefits. The Department notified the Claimant of its eligibility determination on January 14, 2014.

Therefore, this hearing is an appeal of the January 14, 2014, eligibility determination, and is not an attempt to re-litigate November 21, 2013, hearing decision.

Divestment is defined by Department of Human Services Bridges Eligibility Manual (BEM) 405 (May 1, 2013). Divestment results in a penalty period in Medical Assistance (M.A.), not ineligibility. Divestment is a type of transfer of an available resource and not an amount of resources transferred. An available resource is all the client's and his spouses assets and income. Divestment means a transfer of a resource that was within the look-back period for less than fair market value and is not exempted by Department policy. If divestment has occurred, the Department will determine the divestment penalty period where Medical Assistance (M.A.) benefits will not be applied towards the costs of long term care. BEM 405, p1.

A transfer of a resource means giving up all or partial ownership in a resource and includes the refusing the rights to an inheritance. BEM 405, p2. A divestment is a transfer of resources that occurred within 60 months of the date of eligibility for Medical Assistance (M.A.) and placement in long term care, where that transfer is not excluded by policy. BEM 405, 4-5. A divestment penalty is determined by dividing the divestment amount by the average monthly long term care cost in Michigan. BEM 405, p. 10.

On March 10, 2011, the Claimant and his spouse executed a Waiver of Spousal Rights agreement, in which they simultaneously relinquished any rights they may have had in resources contained in a revocable trust created on October 22, 2010. As a trustee of this trust, the funds remained an available resource to the Claimant as of its creation. On April 26, 2013, the Claimant's spouse died. On May 16, 2013, the Claimant applied for Medical Assistance (M.A.) and requested long term care. On January 2, 2014, the Department determined that a divestment had occurred. On January 14, 2014, the Department sent the Claimant notice that a divestment penalty would be applied to his request for long term care.

The Department had determined that a divestment penalty would apply and that the Claimant was not eligible for long term care benefits from May 1, 2013, through July 3, 2013. The Department's determination of the divestment amount was not disputed

during the hearing, and the divestment penalty period would have been longer except that the Claimant entered into long term care in May of 2013, and left long term care on July 3, 2013.

The Claimant's attorney argued that the waiver of interest in a spouse's estate is not a transfer for less than market value, and should not be considered a divestment because it is a transfer of resources to a spouse.

It is not divestment to transfer resources from the client to the client's spouse where that transfer is solely for the benefit of the spouse. BEM 405, p 7. A transfer is solely for the benefits of a spouse where a binding arrangement ensures that none of the transferred resources can be used for someone else during the person's lifetime. BEM 405, p 9.

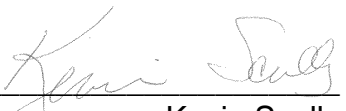
This Administrative Law Judge finds that waving interest in a spouse's estate is not a transfer solely for the benefit of a spouse. Upon the death of a spouse, the wavier of interest in the spouse's estate benefits the other heirs of the estate because additional funds are made available for those heirs. Therefore this transfer cannot be excluded from consideration as a divestment as a transfer solely for the benefit of a spouse.

Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the Department was acting in accordance with policy when it determined on January 14, 2014, that a divestment penalty would apply to the Claimant's Medical Assistance (M.A.) benefits and that long term care expenses would not be covered from May 1, 2013, through July 3, 2013.

DECISION AND ORDER

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 determined a divestment penalty applied to the Claimant's request for Medical Assistance (M.A.).

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



Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 19, 2014

Date Mailed: March 19, 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

KS/hj

cc:

