

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-24429
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: March 4, 2014
County: Grand Traverse

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

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], the Claimant's [REDACTED] and [REDACTED] with the Medicaid Medicare Assistance Program. Participants on behalf of the Department of Human Services (Department) included Assistance Payments Supervisor, [REDACTED] Eligibility Specialist [REDACTED].

ISSUE

Did the Department properly determine that the Claimant's Medicaid benefits (MA) was subject to a divestment penalty?

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 Claimant was an ongoing recipient of MA.
2. On November 8, 2013, the Department sent the Claimant a DHS-1605, Notice of Case Action informing the Claimant that the MA case was subject to a divestment penalty beginning September 1, 2013.
3. On January 22, 2014, the Department received the Request for Hearing protesting the divestment penalty that was submitted by the Claimant's representative as a Durable Power of Attorney (DPOA).

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.

It is not contested as of February 13, 2009, the Claimant loaned his [REDACTED] \$ [REDACTED] in [REDACTED] and [REDACTED] due to the economic downturn and a [REDACTED]. It is also not contested that the Claimant's [REDACTED] has made only two payments totaling \$ [REDACTED] leaving a balance of \$ [REDACTED]. It is also not contested that this [REDACTED] is not documented anywhere in writing and it is not actuarially sound. This is the amount that the Department alleges should be subject to divestment. The Department relies upon, Bridges Eligibility Manual (BEM) 400 (2013) p. 40. It provides that all money used to purchase a promissory note, loan, or mortgages is counted as a divestment unless all of the following are true:

- The repayment schedule is actuarially sound; and
- The payments are made in equal amounts during the term of the agreement with no deferral of payments and no balloon payments; and
- The note, loan, or mortgage must prohibit the cancellation of the balance upon the death of the lender; see Uncompensated Value in BEM 405 to determine value.

The payments from a note that meets these requirements are countable as unearned income.

The Claimant's DPOA argues that none of the remaining balance of \$ [REDACTED] should be subject to divestment. The Claimant relies on BEM 405 p. 11. It provides that transfers exclusively for a purpose other than to qualify or remain eligible for MA are not divestment. It instructs Departmental workers to assume transfers for less than fair market value were for eligibility purposes until the Claimant or spouse provides convincing evidence that they had no reason to believe LTC or waiver services might be needed. The Claimant's DPOA argues that the Claimant had no reason to believe that he might need LTC services when he made the [REDACTED] to his [REDACTED] [REDACTED] previously.

Though there is nothing in writing and it is not being repaid in a manner that is actuarially sound, the Department characterizes this transaction between the Claimant

and his [REDACTED] as a [REDACTED] BEM 405 pp.1, 2 defines divestment is a type of transfer of the resource and not an amount of resources transferred. The transfer of the resource must have occurred with-in the look-back period, it must be for less than fair market value and it must not be listed under transfers that are not divestment, which are enumerated further on in the policy. Transferring a resource means giving up all or partial ownership in a resource. Not all transfers are divestment. BEM 405 lists examples of transfers and nowhere on that list is a loan considered a transfer. Furthermore, BEM 405 is the MA divestment policy. The Administrative Law Judge therefore gives more weight to BEM 405 as opposed to BEM 400 which is the asset policy. The Administrative Law Judge concludes that the [REDACTED] between the Claimant during the Claimant's [REDACTED] and [REDACTED] due to the economic downturn did not constitute a transfer. However, assuming it did constitute a transfer, this administrative law judge concludes that it was for another purpose outside of MA eligibility because the Claimant could not foresee the need for LTC care at the time he made the [REDACTED] ghter.

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 did not act in accordance with Department policy when it determined that the Claimant's MA case should be subject to a divestment penalty.

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. Re-determine the Claimant's eligibility for MA back to September 1, 2013, and
2. Issue the Claimant any supplement he may thereafter be due.



Susanne E. Harris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 3/20/14

Date Mailed: 3/21/14

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 Claimant;
- 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

SEH/tb

cc:

