

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-24444
Issue No.: 2007
Case No.: [REDACTED]
Hearing Date: March 5, 2014
County: Gratiot

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Lead Worker).

ISSUES

Did the Department properly process Claimant's divestment penalty period?

Did the Department determine Claimant's correct long-term care (LTC) post-eligibility patient pay amount (PPA)?

FINDINGS OF FACT

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

1. Claimant was in a long-term care facility during the relevant time period.
2. On October 10, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which indicated that for purposes of the Medicaid program known as Group 2 Aged, Blind, Disabled, Claimant's patient pay amount (PPA) was \$ [REDACTED] effective November 1, 2013. This notice also provided a baseline date of September 1, 2012. The Department then provided the following:
 - a. "Medicaid will not pay for your long-term care and home and community-based waiver services from 11/01/2013 through 01/19/2014 because you or your [REDACTED] transferred [REDACTED] or income for less than their fair market value. Notify your specialist if you are denied [REDACTED]."

3. On January 8, 2014, the Department mailed Claimant a Notice of Case Action (DHS-1605) which indicated that, effective January 1, 2014; Claimant was eligible for the Medicaid Extended Care program and had a PPA of \$ [REDACTED]. The notice also provided that Claimant's [REDACTED] would be from "2/01/2014 through 03/31/2015."
4. On January 21, 2014, the Department received a request for hearing filed by Claimant's attorney which challenged the Department's January 8, 2014 decision to concerning the "2/01/2014 through 03/31/2015" divestment period.

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.

The Medicaid program was created by Congress with the intent "to provide benefits to the truly needy." *Mackey v Dep't of Human Servs*, 289 Mich App 688, 697; 808 NW2d 484 (2010). "To be eligible for Medicaid long-term-care benefits in Michigan, an individual must meet a number of criteria, including having \$2,000 or less in countable assets." *Mackey* at 698. In some cases, persons with wealth have transferred their assets for less than fair market value in order to become eligible for Medicaid. *Mackey* at 698-699. The typical purpose of such transfers is to "pass on . . . accumulated wealth" within the family unit. *Mackey* at 697. To avoid this misuse of the Medicaid system, however, a state examines all transfers of assets within a specified time frame to determine whether the transfers were made "solely to become eligible for Medicaid, which can be established if the transfer was made for less than fair market value." *Mackey* at 696. This time frame is the "look-back period." *Mackey, supra*. "A transfer for less than fair market value during the 'look-back' period is referred to as a 'divestment.'" *Mackey, supra*. A divestment "subjects the applicant to a penalty period during which payment of long-term-care benefits is suspended." *Mackey, supra*.

A "divestment" is a transfer of assets that would create a penalty period. BEM 405 (10-1-2013). The "penalty period" is a period of disqualification from Medicaid assistance for Long Term Care (LTC). BEM 405. In other words, the penalty period is the number of months of long term care that will not be covered by Medicaid. BEM 405. Divestment is a type of transfer of a resource and not an amount of resources transferred. BEM 405. Divestment results in a penalty period in Medicaid, not ineligibility. BEM 405.

Here, both the Department and [REDACTED] agree as to the basic facts in this matter. According to both sides, Claimant's divestment penalty period should have expired on January 19, 2014; however the Department erroneously extended his divestment period from February 1, 2014 through March 31, 2015. The Department acknowledged the mistake and requested a [REDACTED] ([REDACTED]) to correct the error. Both parties also requested that the proper determination of Claimant's PPA should be \$ [REDACTED]. Accordingly, the parties requested the Administrative Law Judge issue an order that: (1) expedites the remedy ticket and (2) determines that Claimant's PPA be \$ [REDACTED].

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Because the parties do not dispute the issues in the instant matter, there is no controversy for this Administrative Law Judge to decide. Thus, 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 Claimant's divestment penalty period continued beyond January 19, 2014 and did not properly determine Claimant's PPA.

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 divestment penalty period which began on September 1, 2012 and expired on January 19, 2014.
2. Promptly process remedy ticket [REDACTED] on an **expedited** basis.
3. Correct Claimant's PPA to \$ [REDACTED].
4. Provide Claimant with any supplemental and/or retroactive assistance to the extent required by applicable policies.

IT IS SO ORDERED.



C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 7, 2014

Date Mailed: March 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.

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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

CAP/las

cc:

