

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201427325
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: March 20, 2014
County: Dickinson 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 20, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] [REDACTED] [REDACTED] attorney for the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] Assistant Attorney General representing the Department.

ISSUE

Whether the Department of Human Services (Department) properly applied a divestment penalty as of March 1, 2014?

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 November 25, 2013, the Claimant's attorney submitted an application for Medical Assistance (M.A.) to the Department requesting long term care on behalf of the Claimant.
2. On December 4, 2013, the Department notified the Claimant that she had been approved for Medical Assistance (M.A.) with retroactive benefits through August 1, 2013, with a patient pay amount of \$ [REDACTED]
3. On January 20, 2014, the Claimant's attorney requested that the Department reconsider its eligibility determination because a divestment was overlooked by the Department.
4. On January 30, 2014, the Department notified the Claimant that a divestment penalty would apply from March 1, 2014, through May 31, 2015.

5. The Department received the Claimant's request for a hearing on February 6, 2014, protesting the Department's failure to apply the divestment penalty from the date the Claimant became eligible for Medical Assistance (M.A.) benefits.

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.

Divestment is a type of transfer of an available resource and not an amount of resources transferred. Divestments during the look-back-period that are for less than fair market value and are not excluded by Department policy result in a divestment penalty. During the divestment penalty, Medical Assistance (M.A.) will not pay for long term care services. Department of Human Services Bridges Eligibility Manual (BEM) 405 (October 1, 2013), p 1.

On November 25, 2013, the Claimant's attorney submitted an application for Medical Assistance (M.A.) on behalf of the Claimant requesting long term care. On December 4, 2013, the Department notified the Claimant that she had been approved for Medical Assistance (M.A.) with retroactive benefits through August 1, 2013, with a patient pay amount of \$5,711.

On January 20, 2014, the Claimant's attorney requested that the Department reconsider its eligibility determination because a divestment was overlooked by the Department.

The amount of the divestment and its timing relative to the Claimant's application for Medical Assistance (M.A.) was not disputed by the Claimant. On January 30, 2014, the Department notified the Claimant that a divestment penalty would apply from March 1, 2014, through May 31, 2015.

The Claimant's attorney argues that the divestment penalty should have applied from the date the Claimant became eligible for Medical Assistance (M.A.) and not the date that the Department discovered its failure to identify the divestment. The Claimant's attorney argues that the Claimant should not be denied any benefit that she was eligible for at the time she applied for Medical Assistance (M.A.) due to the Department's error.

A divestment penalty period starts on the date the individual is eligible for Medical Assistance (M.A.) and would otherwise be receiving long term care. When the medical provider is paid by the individual or by a third party on behalf of the individual for medical services received, the individual is not eligible for Medical Assistance (M.A.) in that month and the month is not a penalty month. If a past unreported divestment is discovered or an agency error is made which should result in a penalty, a penalty must be determined under the policy in place at the time of the discovery. BEM 405, p14.

In this case, the Department did not discover the transfer of resources that should have been identified as a divestment at the time of application. Upon discovering the divestment, the Department made a divestment penalty determination using the policy

in effect at the time of discovery. The months before discovery could not be considered penalty months because the Claimant had been approved for long term care costs as a benefit of her Medical Assistance (M.A.) coverage and her long term care expenses were paid for.

Therefore, this Administrative Law Judge finds that the Department was acting in accordance with policy when it determined that a divestment penalty would apply to the Claimant's Medical Assistance (M.A.) benefits from March 1, 2014, through May 31, 2015.

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 that a divestment penalty would apply to the Claimant's Medical Assistance (M.A.) from March 1, 2014, through May 31, 2015.

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



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

Date Signed: March 25, 2014

Date Mailed: March 25, 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:

