

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2014-31634  
Issue Nos.: 2008  
Case No.: [REDACTED]  
Hearing Date: April 28, 2014  
County: Wayne (82)

**SUPERVISING ADMINISTRATIVE LAW JUDGE:** Colleen M. Mamelka

**HEARING DECISION**

Following a 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 conducted from Detroit, Michigan on Monday, April 28, 2014. Participating on behalf of Claimant/decedent was attorney, [REDACTED], paralegal [REDACTED], and the executor of the estate, [REDACTED] he. Participating on behalf of the Department of Human Services (Department) was [REDACTED] f, [REDACTED], and [REDACTED]. The Department was represented by attorney, [REDACTED].

**ISSUE**

Whether the Department properly recalculated the divestment penalty as a result of an Order of Reconsideration issued under Registration Number 2013-28755.

**FINDINGS OF FACT**

Based upon the competent, material, and substantial evidence on the whole record, the following are findings of material fact:

1. Claimant is deceased.
2. On December 3, 2012, a hearing was held regarding the imposition of a divestment penalty.
3. On December 19, 2012, a Hearing Decision was issued under registration number 2012-47462, which affirmed the Department's determination of a

divestment penalty based on a finding that an annuity was revocable thus countable.

4. A Request for Rehearing/Reconsideration was timely received by the Michigan Administrative Hearing System (MAHS).
5. On December 2, 2013, the Request for Reconsideration was granted under registration number 2013-28755, based on an alleged misapplication of policy regarding the finding that the annuity was a countable asset. (Exhibit 1, pp. 1, 2.)
6. On this same date, December 2, 2012, a Decision and Order of Reconsideration was issued under the same registration number of 2013-28755, which affirmed the Department's treatment of the annuity as a countable asset, but, based on stipulation of the parties, ordered the Department to recalculate the divestment penalty after removing a [REDACTED] promissory note.
7. The Department removed the promissory note and found a divestment in the amount of [REDACTED], which reduced the divestment period from September 1, 2011 through February 2, 2013, to September 1, 2011, through November 2, 2012. (Exhibit 2)
8. On March 11, 2014, the Department received a Request for Hearing, protesting the calculation of the divestment penalty.

### **CONCLUSIONS OF LAW**

As a preliminary matter, during the hearing it was discovered that the Letters of Authority issued to the executor had expired on March 15, 2014. There was no evidence to show that new letters were issued, or were even requested. That being stated, at the time the Hearing Request was submitted, proper authority existed. (See BAM 600 (March 2014), p. 2. As such, this decision will address the merits of the claim.

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables (RFT).

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations. The Department of Human Services, formerly known as the Family Independence Agency, administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

Divestment results in a penalty period in MA, not ineligibility. BEM 405 (April 2012), p. 1. Divestment means a transfer of a resource by a client (or spouse) that is within the look-back period and is transferred for less than fair market value (FMV). BEM 405, p. 1. Less than FMV means the compensation received in return for a resource was worth less than the FMV of the resource. BEM 405, p. 5. Transferring a resource means

giving up all or partial ownership in, or rights to, a resource. BEM 405, p. 2. During the penalty period, MA will not pay for long-term care (LTC) services. BEM 405, p. 1.

The penalty is computed on the total uncompensated value of all resources divested and divided by the average monthly private LTC cost in Michigan to determine the client's baseline date. BEM 405 (October 2013), p. 12. This gives the number of full months for the penalty period. BEM 405, p. 12. The remaining fraction is multiplied by 30 to determine the number of days for the penalty period in the remaining partial month. BEM 405, p. 12. In 2011, the LTC cost was \$6,816.00. BEM 405, p. 13.

In this case, a Decision and Order of Reconsideration was mailed under registration number 2013-28755 on December 2, 2013. The reconsideration was granted and the issue presented was whether the ALJ erred in affirming the Department's imposition of a divestment penalty based on a divested amount of [REDACTED], for the time period of September 1, 2011 through February 2, 2013. The Supervising ALJ cited to BEM 401 which provides in relevant part that the conversion of countable resources to income through the purchase of an annuity (on or after September 1, 2005), is considered a transfer for less than fair market value if, amongst other things, the annuity failed to name the State of Michigan as the remainder beneficiary. The Supervising ALJ concluded that the finding of divestment was proper although noting that the assigned ALJ reached the correct decision by citing policy applicable to trusts.

Also discussed in the Decision and Order of Reconsideration was the fact that the parties stipulated that the [REDACTED] 0 promissory note should be excluded from the divestment penalty calculation. As such, the Department was order to recalculate Claimant's divestment penalty by removing the [REDACTED] promissory note from the [REDACTED], divested amount. The remaining [REDACTED] 1 ([REDACTED] 1 - [REDACTED]) divested amount, which represented the annuity, was affirmed. The Decision and Order of Reconsideration was mailed out on December 2, 2013. This decision was not appealed to Circuit Court.

In accordance with the Decision and Order of Reconsideration, the Department recalculated the divestment penalty. Based on the [REDACTED] (rounded) divested annuity, the Department imposed a penalty from September 1, 2011 through November 2, 2012. The parties were notified accordingly.

On March 11, 2014, a Request for Hearing was received which provided as follows:

"Incorrect date used for calculating divestment penalty period per Decision and Order of Reconsideration, Order Granting Reconsideration of the Hearing Decision and Met Life Statement."

During the Hearing, the issue regarding the "incorrect date" was never raised. Instead, several attempts were made to revisit the issue of whether or not the Department properly determined the divestment was proper with respect to the annuity. This issue was previously adjudicated at the 2½ hour hearing held on December 3, 2013, and was

again raised on reconsideration. The Decision and Order of Reconsideration was not appealed to Circuit Court, and therefore, the only issue addressed at this hearing was whether or not the Department properly calculated the divestment penalty. Counsel conceded that the divestment penalty imposed would be correct based on a divested amount of [REDACTED].

Ultimately, the Department established it acted in accordance with Department policy when it calculated the divestment penalty. Accordingly, the Department's determination is AFFIRMED.

### DECISION AND ORDER

The Supervising Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department acted in accordance with Department policy when it calculated the divestment penalty.

Accordingly, the Department's determination is AFFIRMED.

*Colleen M. Mamelka*

**Colleen M. Mamelka**  
Supervising Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: May 19, 2014

Date Mailed: May 20, 2014

**NOTICE OF APPEAL:** A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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.

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The party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

CMM/tmm

cc:

