

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-000802-R
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: December 18, 2014
County: LAPEER

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

REMAND 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, an in-person rehearing was held on December 18, 2014. Claimant is in Long Term Care and did not appear at the rehearing. Claimant was represented at the rehearing by Authorized Hearings Representative [REDACTED] ([REDACTED] and Durable Power of Attorney) and Attorney [REDACTED] ([REDACTED]). The Department of Human Services was represented by [REDACTED], Eligibility Specialist acting as Hearings Facilitator, and Assistant Attorney General [REDACTED] ([REDACTED]).

ISSUE

- I. Whether the Department of Human Services (the Department or DHS) properly determined that Claimant had a divestment of property?
- II. Whether the Department properly calculated the divestment penalty?

PROCEDURAL HISTORY AND 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 4, 2013, Claimant's son, Michael Folsom, purchased Claimant's property at [REDACTED] for [REDACTED]. The property had a State Equalized Value (SEV) of [REDACTED]. (Exhibit 35-36).
2. On November 8, 2013, the Department received an application for Claimant for long-term care Medical Assistance.
3. On January 3, 2014, the application was denied for failure to provide all verification information.

4. On January 14, 2014, a second application was filed for Medical Assistance and retroactive Medical Assistance.
5. On January 3, 2014, the Department caseworker sent Claimant notice that the original November 8, 2013 application was denied.
6. On February 26, 2014, the Department caseworker determined that Claimant had divested property and had a divestment penalty from November 1, 2013 until April 1, 2014 ([REDACTED] divested divided by [REDACTED] monthly cost of LTC = 19.05 (18 months and 1 day).
7. On February 26, 2014, the Department approved Claimant for Medical Assistance benefits with a divestment penalty period of 18 months and 1 day because Claimant's son divested [REDACTED] in income.
8. On April 2, 2014, Claimant's representative filed a request for hearing to contest the Department's negative action/divestment for both applications.
9. On June 11, 2014, Administrative Law Landis Y. Lain issued a Decision and Order Affirming the department's decision that there had been asset divestment, and that a divestment penalty period of 18 months and one day should be imposed.
10. On July 11, 2014, claimant, through his Attorney, filed a Claim of Appeal under MCL 24.301 and MAC R 400.921, and Petitioner's Motion to Submit Additional Evidence under MCR 7.119 (G).
11. On September 22, 2014 a hearing on the Motion to Submit Additional Evidence was held.
12. On September 25, 2014. Honorable Nick O. Holowka, Circuit Court Judge in the 40th Circuit Court for the County of Lapeer issued an **ORDER TO REMAND FOR THE TAKING OF ADDITIONAL EVIDENCE (Case No. [REDACTED])** which states in pertinent part:

The matter is remanded to the Administrative Law Judge for rehearing on whether a divestment occurred in this matter and, if so, to what extent a divestment occurred. On rehearing, the Administrative Law Judge shall admit and consider the following material evidence:

1. The documents comprising EXHIBIT B of Petitioner's/Appellant's Motion to Present Additional Evidence, consisting of records of the register of deeds and up property record card;
2. The documents comprising EXHIBIT D of Petitioner/Appellant's Motion to Present Additional Evidence, consisting of an affidavit from [REDACTED]; and

3. The documents comprising EXHIBITS A-C of Petitioner/Appellant's supplement to motion to present additional evidence, consisting of three certified appraisals. After rehearing and consideration of the evidence in this case, the Administrative Law Judge shall issue administrative hearing decision.
13. On October 28, 2014, Supervising Administrative Law Judge C. Adam Purnell issued a Scheduling Order stating that a new hearing will be scheduled in this matter as soon as possible for consideration of the additional evidence referenced above and assigned the rehearing to Administrative Law Judge Landis Y. Lain.
14. On December 18, 2014, the rehearing was held and the pertinent information admitted as evidence as ordered by the Circuit Court.
15. The entire prior record including evidence, testimony and Decision and Order gathered at the May 21, 2014 hearing are herein incorporated by stipulation or agreement of the parties.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Claimants 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 of that decision. BAM 600.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or Department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Title XIX of the Social Security Act, commonly referred to as "The Medicaid Act," provides for medical assistance services to individuals **who lack the financial means to obtain needed health care**. 42 U.S.C. §1396. (Emphasis added)

The Medicaid program is administered by the federal government through the Centers for Medicaid and Medicare Services (CMS) of the Department of Health and Human Services (HHS). The state and federal governments share financial responsibility for Medicaid services. Each state may choose whether or not to participate in the Medicaid program. Once a state chooses to participate, it must operate its Medicaid program in accordance with mandatory federal requirements, imposed both by the Medicaid Act

and by implementing federal regulations authorized under the Medicaid Act and promulgated by HHS.

Participating states must provide at least seven categories of medical services to persons determined to be eligible Medicaid recipients. 42 USC §1396a(a)(10)(A), 1396d(a)(1)-(5), (17), (21). One of the seven mandated services is *nursing facility services*. 42 USC §1396d(a)(4)(A).

For medical assistance eligibility, the Department has defined an asset as “any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.” NDAC 75-02-02.1-01(3). Under both federal and state law, an asset must be “actually available” to an applicant to be considered a countable asset for determining medical assistance eligibility. *Hecker*, 527 N.W.2d at 237 (*On Petition for Rehearing*); *Hinschberger v. Griggs County Social Serv.*, 499 N.W.2d 876, 882 (N.D.1993); 42 U.S.C. § 1396a(a)(17)(B); 1 J. Krauskopf, R. Brown, K. Tokarz, and A. Bogutz, *Elderlaw: Advocacy for the Aging* § 11.25 (2d ed. 1993). Yet, “actually available” resources “are different from those *in hand*.” *Schweiker v. Gray Panthers*, 453 U.S. 34, 48, 101 S.Ct. 2633, 2642, 69 L.Ed.2d 460 (1981) (emphasis in original). NDAC 75-02-02.1-25(2) explains: Only such assets as are actually available will be considered. Assets are actually available when at the disposal of an applicant, recipient, or responsible relative; when the applicant, recipient, or responsible relative has a legal interest in a liquidated sum and has the legal ability to make the sum available for support, maintenance, or medical care; or when the applicant, recipient, or responsible relative has the lawful power to make the asset available, or to cause the asset to be made available. Assets will be reasonably evaluated.... See also 45 C.F.R. § 233.20(a)(3)(ii)(D).

As noted in *Hecker*, if an applicant has a legal ability to obtain an asset, it is considered an “actually available” resource. The actual-availability principle primarily serves “to prevent the States from conjuring fictional sources of income and resources by imputing financial support from persons who have no obligation to furnish it or by overvaluing assets in a manner that attributes non-existent resources to recipients.” *Heckler v. Turner*, 470 U.S. 184, 200, 105 S.Ct. 1138, 1147, 84 L.Ed.2d 138 (1985).

The focus is on an applicant's actual and practical ability to make an asset available as a matter of fact, not legal fiction. See *Schrader v. Idaho Dept. of Health and Welfare*, 768 F.2d 1107, 1112 (9th Cir.1985). See also *Lewis v. Martin*, 397 U.S. 552, 90 S.Ct. 1282, 25 L.Ed.2d 561 (1970) (invalidating California state regulation that presumed contribution of non-AFDC resources by a non-legally responsible and non-adoptive stepfather or common law husband of an AFDC recipient's mother).

Determining whether an asset is “actually available” for purposes of medical assistance eligibility is largely a fact-specific inquiry depending on the circumstances of each case. See, e.g., *Intermountain Health Care v. Bd. of Cty. Com'rs*, 107 Idaho 248, 688 P.2d 260, 264 (Ct.App.1984); *Radano v. Blum*, 89 A.D.2d 858, 453 N.Y.S.2d 38, 39 (1982); *Haynes v. Dept. of Human Resources*, 121 N.C.App. 513, 470 S.E.2d 56, 58 (1996). Interpretation of the “actually available” requirement must be “reasonable and humane

in accordance with its manifest intent and purpose....” *Moffett v. Blum*, 74 A.D.2d 625, 424 N.Y.S.2d 923, 925 (1980). That an applicant must sue to collect an asset the applicant has a legal entitlement to usually does not mean the asset is actually unavailable. See, e.g., *Wagner v. Sheridan County S.S. Bd.*, 518 N.W.2d 724, 728 (N.D.1994); *Frerks v. Shalala*, 52 F.3d 412, 414 (2d Cir.1995); *Probate of Marcus*, 199 Conn. 524, 509 A.2d 1, 5 (1986); *Herman v. Ramsey Cty. Community Human Serv.*, 373 N.W.2d 345, 348 (Minn.Ct.App.1985). See also *Ziegler v. Dept. of Health & Rehab. Serv.*, 601 So.2d 1280, 1284 (Fla.Ct.App.1992) At issue here is the methodology utilized in determining the availability of an individual's “resources” for purposes of evaluating his or her eligibility. SSI recipients, and thus SSI-related “medically needy” recipients, may not retain resources having a value in excess of \$2,000. 42 U.S.C. § 1382(a)(1)(B).

The regulations governing the determination of eligibility provide that resources mean cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his support and maintenance. If the individual has the right, authority or power to liquidate the property, or his share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual (or spouse).20 C.F.R. § 416.1201(a).

After the Medicaid program was enacted, a field of legal counseling arose involving asset protection for future disability. The practice of “Medicaid Estate Planning,” whereby “individuals shelter or divest their assets to qualify for Medicaid without first depleting their life savings,” is a legal practice that involves utilization of the complex rules of Medicaid eligibility, arguably comparable to the way one uses the Internal Revenue Code to his or her advantage in preparing taxes. See generally *Kristin A. Reich, Note, Long-Term Care Financing Crisis-Recent Federal and State Efforts to Deter Asset Transfers as a Means to Gain Medicaid Eligibility*, 74 N.D. L.Rev. 383 (1998). Serious concern then arose over the widespread divestiture of assets by mostly wealthy individuals so that those persons could become eligible for Medicaid benefits. *Id.*; see also *Rainey v. Guardianship of Mackey*, 773 So.2d 118 (Fla. 4th DCA 2000). As a result, Congress enacted several laws to discourage the transfer of assets for Medicaid qualification purposes. See generally *Laura Herpers Zeman, Estate Planning: Ethical Considerations of Using Medicaid to Plan for Long-Term Medical Care for the Elderly*, 13 *Quinnipiac Prob. L.J.* 187 (1988). Recent attempts by Congress imposed periods of ineligibility for certain Medicaid benefits where the applicant divested himself or herself of assets for less than fair market value. 42 U.S.C. § 1396p(c)(1)(A); 42 U.S.C. § 1396p(c)(1)(B)(i); *Fla. Admin. Code R. 65A-1.712(3)*. More specifically, if a transfer of assets for less than fair market value is found within 36 months of an individual's application for Medicaid, the state must withhold payment for various long-term care services, i.e., payment for nursing home room and board, for a period of time referred to as the penalty period. *Fla. Admin. Code R. 65A-1.712(3)*. Medicaid does not, however, prohibit eligibility altogether. It merely penalizes the asset transfer for a certain period of time. See generally *Omar N. Ahmad, Medicaid Eligibility Rules for the Elderly Long-Term Care Applicant*, 20 *J. Legal Med.* 251 (1999). [*Thompson v. Dep't of Children & Families*, 835 So.2d 357, 359-360 (Fla App, 2003).]

In *Gillmore* the Illinois Supreme Court recognized this same history, noting that over the years (and particularly in 1993), Congress enacted certain measures to prevent persons who were not actually “needy” from making themselves eligible for Medicaid:

In 1993, Congress sought to combat the rapidly increasing costs of Medicaid by enacting statutory provisions to ensure that persons who could pay for their own care did not receive assistance. Congress mandated that, in determining Medicaid eligibility, a state must “look-back” into a three- or five-year period, depending on the asset, before a person applied for assistance to determine if the person made any transfers solely to become eligible for Medicaid. See 42 U.S.C. § 1396p(c)(1)(B) (2000). If the person disposed of assets for less than fair market value during the look-back period, the person is ineligible for medical assistance for a statutory penalty period based on the value of the assets transferred. See 42 U.S.C. § 1396p(c)(1)(A) (2000). [*Gillmore*, 218 Ill 2d at 306 (emphasis added).]

See, also, *ES v. Div. of Med. Assistance and Health Servs.*, 412 NJ Super 340, 344; 990 A.2d 701 (2010) (Noting that the purpose of this close scrutiny while “looking back” is “to determine if [the asset transfers] were made for the sole purpose of Medicaid qualification.”).

This statutory “look-back” period, noted in *Gillmore* and *Thompson* and contained within 42 USC 1396p(c)(1), requires a state to “look-back” a number of years (in this case five) from the date of an asset transfer to determine if the applicant made the transfer solely to become eligible for Medicaid, which can be established if the transfer was made for less than fair market value. See 42 USC 1396p(c)(1); DHS Program Eligibility Manual (PEM) 405, pp 1, 4; see also *Gillmore*, 218 Ill 2d at 306.

“Less than fair market value means the compensation received in return for a resource was worth less than the fair market value of the resource.” BEM 405, p 5.

A transfer for less than fair market value during the “look-back” period is referred to as a “divestment,” and unless falling under one of several exclusions, subjects the applicant to a penalty period during which payment of long-term care benefits is suspended. See, generally BEM 405, pp 1, 5-9. “Congress's imposition of a penalty for the disposal of assets or income for less than fair market value during the look-back period is intended to maximize the resources for Medicaid for those truly in need.” *ES*, 412 NJ Super at 344. See also *Mackey v Department of Human Services*, Michigan Court of Appeals, Docket No. 288966, decided September 7, 2010.

Pertinent Department policy dictates:

Assets must be considered in determining eligibility or SSI related categories. Assets mean cash, any other personal property and real property. (BEM, Item 400 Page 1). Countable assets cannot exceed the applicable asset limit. Not all assets are counted. Some assets are counted for one program but not for another program. (BEM Item 400, Page 1).

The Department is to consider both of the following to determine whether and how much of an asset is countable: An asset is countable if it meets

the availability test and is not excluded. The Department is to consider the assets of each person in the asset group. (BEM, Item 400, Page 1).

Asset eligibility exists when the asset groups countable assets are less than or equal to the applicable asset limit at least one day during the month being tested. (BEM, Item 400, Page 4). An application does not authorize MA for future months if the person has excess assets on the processing date.

The SSI related MA asset limit for SSI related MA categories that are not Medicare Savings Program or QDWI is \$2000.00 for an asset group for one person and \$3000.00 for an asset group of 2 people. BEM, Item 400 Page 5.

An asset must be available to be counted. Available means that someone in the asset group has the legal right to use or dispose of the asset. The Department is to assume an asset is available unless the evidence shows that it is not available. BEM, Item 400, Page 6.

Claimant's representative argues that the Department's determination that Claimant divested ██████ is incorrect. Claimant's representative argues that the State Equalized Value (SEV) on the property which he purchased from his father for ██████ is wrong and that he bought the property for fair market value. Claimant's representative testified that no one lives of the property and that it was not livable in that the estimated repair cost for the house was ██████. The SEV current value at the township assessor is ██████ for the land and the house. Claimant's representative argues that the property is farmland; it is worth ██████ in accordance with surrounding sales of agricultural property.

The caseworker used the tax bill for the summer of 2013 provided to her to determine the SEV of ██████ and doubled the amount to find the value of the house and property which equals ██████. The caseworker then subtracted the ██████ sale price to come up with the divestment amount of ██████. The caseworker then spoke to the Marathon town assessor who indicated that the 2013 assessments went out. Claimant's representative disputed the amount of SEV. The property was then reevaluated and reassessed. As a result the assessment for 2014 went down to ██████. Claimant's representative protested again that the amount was still too high and the amount was reduced again through the Board of Review to ██████ for 2014, (Exhibit A page 6).

BEM, Item 405, states:

Divestment results in a penalty period in MA, **not** ineligibility. Divestment is a type of transfer of a resource and not an amount of resources transferred.

Divestment means a transfer of a resource (see RESOURCE DEFINED below and in glossary) by a Claimant or his spouse that are all of the following:

- Is within a specified time; see LOOK-BACK PERIOD in this item.
- Is a transfer for LESS THAN FAIR MARKET VALUE;
- Is not listed below under TRANSFERS THAT ARE NOT DIVESTMENT

See Annuity Not Actuarially Sound and Joint Owners and Transfers below and BEM 401 about special transactions considered transfers for less than fair market value.

During the penalty period, MA will **not** pay the Claimant's cost for:

- LTC services.
- Home and community-based services.
- Home Help.
- Home Health. BEM, Item 405, page 1

Resource means all the Claimant's and his spouse's assets and income. It includes all assets and all income, even countable and/or excluded assets, the individual or spouse receive. It also includes all assets and income that the individual (or their spouse) were entitled to but did **not** receive because of action by one of the following:

- The Claimant or spouse.
- A person (including a court or administrative body) with legal authority to act in place of or on behalf of the Claimant or the Claimant's spouse.
- Any person (including a court or administrative body) acting at the direction or upon the request of the Claimant or his spouse. BEM, Item 405, page 2

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. Not all transfers are divestment. Examples of transfers include:

- Selling an asset for fair market value (not divestment).
- Giving an asset away (divestment).
- Refusing an inheritance (divestment).
- Payments from a **MEDICAID TRUST** that are **not** to, or for the benefit of, the person or his spouse; see BEM 401 (divestment).
- Putting assets or income in a trust; see BEM 401.
- Giving up the **right** to receive income such as having pension payments made to someone else (divestment).
- Giving away a lump sum or accumulated benefit (divestment).
- Buying an annuity that is **not** actuarially sound (divestment).

- Giving away a vehicle (divestment).
- Putting assets or income into a Limited Liability Company (LLC)BEM, item 405, page 2

Department policy states that it is **not** divestment to transfer a homestead to the Claimant's:

- Spouse; see Transfers Involving Spouse above.
- Blind or disabled child; see Transfers Involving Child above.
- Child under age 21.
- Child age 21 or over who:
 - Lived in the homestead for at least two years immediately before the Claimant's admission to LTC or BEM 106 waiver approval, **and**
 - Provided care that would otherwise have required LTC or BEM 106 waiver services, as documented by a physician's (M.D. or D.O.) statement. BEM Item 405, page 8.

Policy also states that the uncompensated value of a divested resource is

- The resource's cash or equity value.
- Minus any compensation received.
- The uncompensated value of a promissory note, loan, or mortgage is the outstanding balance due on the "Baseline Date" BEM, Item 405, page 12.

When divestment occurs the Department must invoke a penalty period. The transferred amount is used to calculate the penalty period. The Department may only recalculate the penalty period under certain circumstances. Pertinent policy dictates that the first step in determining the period of time that transfers can be looked at for divestment is determining the baseline date. Once the baseline date is established, you determine the look-back period. The look back period is 60 months prior to the baseline date for all transfers made after February 8, 2006. BEM, Item 405, page 2-4.

The Department is allowed to recalculate the penalty period if either of the following occurs while the penalty is in effect:

- All the transferred resources are returned.
- Full compensation is paid for the resources.

Use the same per diem rate originally used to calculate the penalty period.

Once a divestment penalty is in effect, return of, or payment for, resources **cannot** eliminate any portion of the penalty period already past. However, the caseworker must recalculate the penalty period. The divestment penalty ends on the later of the following:

- The end date of the new penalty period.

- The date the Claimant notified you that the resources were returned or paid for. BEM, Item 405, pages 12-13

I. Whether the Department of Human Services (the Department or DHS) properly determined that Claimant had a divestment of property?

Claimant's position is that no divestment occurred because claimant's son purchased the relevant property for Fair Market Value. Also, the appraisals submitted support claimant's contention that the property was sold for fair market value. Michael Folsom conceded on the record that the relevant property was never listed on the open market.

The Department's position is that there is divestment and the divestment penalty may only be cancelled if "all the transferred resources are returned and retained by the individual" or "fair market value" is paid for the resources. The penalty period may only be recalculated if "all of the transferred resources are returned", or "full compensation is paid for the resource." BEM, Item 405, page 12. Moreover, the Department contends that the property was not sold for fair market value and the transaction was not an arm length transaction.

Fair market value is defined as:

The amount of money the owner would receive in the local area for his asset (or his interest in an asset) if the asset (or his interest in the asset) was sold on short notice, possibly without the opportunity to realize the full potential of the investment. That is, what the owner would receive and a buyer be willing to pay on the open market and in an arm length transaction. See definition in this glossary. Bridges Policy Glossary, (BPG), page 25.

Policy requires caseworkers to rely on specific documentation to determine the fair market value of real property and mobile homes. They must use:

- Deed, mortgage, purchase agreement or contract.
- State Equalized Value (SEV) on current property tax records multiplied by two.
- Statement of real estate agent or financial institution.
- Attorney or court records.
- County records. BEM 400, page 29-30

Caseworkers are not directed to use certified appraisals as verification documentation for determination of fair market value of real property.

Pertinent Department policy defines Arm Length Transaction as:

A transaction between two parties who are not related and who are presumed to have roughly equal bargaining power. It consists of all the following three elements:

- it is voluntary
- each party is acting in their own self-interest
- it is on an open market.

By definition a transaction between two relatives is not an arm length transaction. Bridges Policy Glossary (BPG), page 25

This Administrative Law Judge finds that the Department policy is explicit. It states that all the transferred resources must be returned, or fair market value must be paid for the resources, or full compensation paid for the resources, before the necessity for either cancellation or recalculation of the divestment period can be triggered.

There has been no testimony in this case that the [REDACTED] that claimant's representative has alleged that he paid to claimant for the property was used for the claimant's nursing home or for claimant's benefit.

Claimant's representative submitted three certified appraisals in support of his contention that he paid Fair Market Value for claimant's property.

The first appraisal, dated August 28, 2014 indicates that the property is appraised as of August 25, 2014 for [REDACTED]. (Exhibit E, page 2) Claimant's son purchased the property in 2013. The first appraisal is not probative to the purchase as it is conducted a year later than the actual purchase of the property. Property values fluctuate.

The second appraisal, dated September 4, 2014 indicates that the real property value as of November 4, 2013 is [REDACTED]. (Exhibit F, page 2) The third appraisal, dated September 10, 2014 indicates that the real property, as of November 4, 2013, as improved is [REDACTED]. (Exhibit G, page 2)

Taken in the light most favorable to claimant, appraisals #2 and #3 indicate that the property was worth substantially more than the [REDACTED] the claimant's son paid for the property. Thus, not only was there no arm length transaction, the property was not purchased at fair market value. Under the circumstances divestment has occurred.

II. Whether the Department properly calculated the divestment penalty?

Medicaid is the joint state/federal program that provides payment for covered health care services for eligible *indigent* individuals. MCL 400.105, *et seq*; 42 USC 1396a, *et seq*. Medicaid is a means tested program. If Medicaid applicants have sufficient assets, income or insurance to pay for health care they do not qualify for the Medical

Assistance program. Claimant at all times relevant to this application, retained sufficient assets to pay claimant's LTC if those assets had not been divested by his son, and thus, the divested assets must be counted as divested excess assets for purposes of Medical Assistance benefit eligibility.

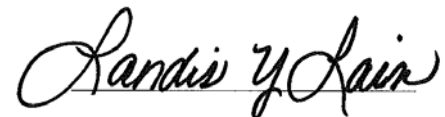
This Administrative Law Judge finds that Claimant's representative has divested [REDACTED] using the 2013 SEV values for Claimant's property at the time of purchase. The Department appropriately relied upon the SEV values as verification of property value at the time of purchase of the property. Penalty of 18 months and one day for the transfer of a resource by divesting assets for less than fair market value is correct under the circumstances. Claimant's son was always at liberty to sell the land/property on the open market and use the proceeds to pay the nursing home with the proceeds, which would not have resulted in divestment. The Claimant's son chose to purchase the property himself for under fair market value and use the assets for other purposes, which were not exempted under Department policy.

Claimants' representative's testimony and evidence submitted on the record are not sufficient to rebut the Department's determination that divestment occurred. The Department's determination that Claimant's penalty period must remain at 18 months and one day is correct under the circumstances. The Department has established by the necessary competent, substantial and material evidence on the record that it was acting accordance with Department policy when it determined that claimant's representative divested assets when he purchased claimant's property and when it calculated and instituted the divestment penalty under the circumstances.

REMAND DECISION AND ORDER

Upon rehearing and reconsideration of all testimony and evidence admitted on the record, the Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services has established by a preponderance of evidence that there has been asset divestment, and properly determined that a divestment penalty period should be instituted for 18 months and one day under the circumstances.

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



Landis Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 01/06/2015

Date Mailed: 01/06/2015

NOTICE: The law provides that within 30 days of receipt of the above Reconsideration Decision and Order, the Claimant may appeal it to the circuit court for the county in which he/she lives.

LYL/sw

cc:

