

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 14-015291  
Issue No.: 2008  
Case No.: [REDACTED]  
Hearing Date: February 5, 2015  
County: Kent (1) Franklin

**ADMINISTRATIVE LAW JUDGE:** Darryl Johnson

**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 February 5, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Claimant's attorney [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Family Independence Manager [REDACTED] and Eligibility Specialist [REDACTED]. Assistant Attorney General [REDACTED] represented the Department.

**ISSUE**

Did the Department properly impose a two-month penalty period on Claimant's eligibility for Medicaid (MA)?

**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 applied for MA on July 30, 2014.
2. Claimant resides in an assisted-living home.
3. Claimant was denied for SSI-related MA because of excess income for the months of July and August 2014.
4. At the time of his application, Claimant was the payee of a promissory note dated [REDACTED], which had a face value of \$ [REDACTED].

5. The Department concluded the note did not meet the requirements of BEM 400 (7/1/14) at pages 38-39 to make it a non-countable asset; and thus, Claimant had assets exceeding the allowable limit for him to be eligible for MA.
6. On [REDACTED], Claimant assigned the note to another individual but no evidence was provided to the Department to establish that it was assigned for fair market value.
7. At the time of the transfer, the note had a payoff value of \$ [REDACTED] (Exhibit A Page 12.)
8. On September 22, 2014, the Department mailed to Claimant a Health Care Coverage Determination Notice informing him that he was eligible for medical assistance with a monthly deductible of \$ [REDACTED] for the month of September 2014, and beginning October 1, 2014, a deductible of \$ [REDACTED] (Exhibit A Pages 19-21.)
9. Claimant's cost of care was \$ [REDACTED] per month.
10. The average monthly cost for long-term care in 2014 was \$ [REDACTED]
11. Claimant paid for his September care on September 22, 2014. (Exhibit A Page 22.)
12. On October 15, 2014, the Department mailed to Claimant a Health Care Coverage Determination Notice (Exhibit A Pages 28-30) finding that he was eligible for MA beginning October 1, 2014, but MA would not pay for his care from October 1, 2014 through December 1, 2014, because he transferred the note for less than fair market value.
13. The Department received Claimant's hearing request on October 23, 2014.

### **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 Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Divestment results in a penalty period in MA, not ineligibility. BEM 405 (7/1/14), 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. The giving away of an asset results in divestment. BEM 405, p. 2. During the penalty period, MA will not pay for long-term care services. BEM 405, p. 1.

Claimant, through his attorney, argued that the divestment period should have begun running on September 1, 2014. The Department contends it appropriately began running on October 1, 2014. Based upon the arguments of counsel, the dispute is solely focused on the commencement date of the penalty period, not the length of the period.

In BEM 400 (7/1/14) at page 39, the policy is expressed regarding valuing promissory notes, land contracts and mortgages:

The value of a promissory note, land contract or mortgage is the amount it can be sold for in the holder's geographic area on short notice (usually at a commercial discount rate) minus any lien on the property the holder must repay. If the note meets the requirements listed above and also states that it is non-salable and non-transferable, then the note itself is not a countable asset, but the payments are countable unearned income.

BEM 405 states: "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. That is, the amount received for the resource was less than what would have been received if the resource was offered in the open market and in an arm's length transaction."

At BEM 405, p. 11 we find: "As explained below, transfers exclusively for a purpose other than to qualify or remain eligible for MA are not divestment.

"Assume transfers for less than fair market value were for eligibility purposes until the client or spouse provides convincing evidence that they had no reason to believe LTC or waiver services might be needed."

The Department is to assume transfers for less than fair market value were for eligibility purposes. The Claimant then must provide convincing evidence that they had no reason to believe LTC or waiver services might be needed. There does not seem to be a dispute that this was a divestment.

BEM 405 at page 12 instructs the Department to: "Divide the total Uncompensated Value by the average monthly private LTC Cost in Michigan for the client's Baseline Date. This gives the number of full months for the penalty period. Multiply the fraction remaining by 30 to determine the number of days for the penalty period in the remaining partial month. Apply the total penalty months and days. Apply a penalty even if the total amount of the penalty is for only a partial month."

The average cost of care for 2014 (BEM 405, p 13) is \$ [REDACTED]. When the \$ [REDACTED] is divided by \$ [REDACTED] it results in a penalty period of 2.06 months, or 2 months and 1 day. That is the penalty period the Department imposed.

BEM 405 at page 13 is instructive:

When a medical provider is paid by the individual, or by a third party on behalf of the individual, for medical services received, that month is not a penalty month. That month cannot be counted as part of the penalty period. This does not include payments made by commercial insurance or Medicare. See Resources Returned in this item.

Claimant (or someone on his behalf) paid for September before the Department approved him for SSI-based MA. Consequently, he was not eligible for coverage for September.

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 imposed a penalty period beginning October 1, 2014 for Claimant's long-term care coverage.

#### **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED** with respect to the imposition of a divestment penalty period.



**Darryl Johnson**  
Administrative Law Judge  
for Nick Lyon, Interim Director  
Department of Human Services

Date Signed: **2/10/2015**

Date Mailed: **2/10/2015**

DJ/jaf

**NOTICE OF APPEAL:** A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, 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.

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 48909-8139

cc:

