

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

IN THE MATTER OF:



Reg. No.: 14-013461
Issue No.: 2000, 2001, 2008
Case No.: [REDACTED]
Hearing Date: January 27, 2015
County: Muskegon

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, telephone hearing was held on January 27, 2015, from Lansing, Michigan. Participants on behalf of Claimant included her attorney Paul Winter. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (hearing facilitator), [REDACTED] (eligibility specialist), and Assistant Attorney General [REDACTED].

ISSUE

Did the Department properly determine a divestment penalty against the Claimant's long term care benefits?

FINDINGS OF FACT

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

1. On January 7, 2014, the Claimant transferred her interest in an annuity to another person for less than fair market value.
2. On May 20, 2014, the Department denied the Claimant's application for Medical Assistance (MA) as of March 1, 2014, for failure to provide the Department with information necessary to determine her eligibility to receive benefits.
3. On May 30, 2014, the Department received the Claimant's new application for Medical Assistance (MA) benefits.
4. On July 7, 2014, the Department notified the Claimant that she was approved for Medical Assistance (MA) as of May 1, 2014, with a \$ [REDACTED] monthly patient pay amount, but denying retroactive benefits for April of 2014.
5. On July 23, 2014, the Department notified the Claimant that a divestment penalty would apply against the Claimant's long term care Medical Assistance (MA) benefits from May 1, 2014, through July 26, 2014.

6. On October 6, 2014, the Department received the Claimant's request for a hearing protesting the Department's determination of the divestment penalty applied against her long term care Medical Assistance (MA) benefits.

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.

Clients 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. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (October 1, 2014), p. 5, provides in relevant part as follows:

The client or authorized hearing representative has *90 calendar days from the date of the written notice of case action to request a hearing*. The request must be received anywhere in DHS within the 90 days. [Emphasis added.]

Divestment means a transfer of a resource by a client or his spouse that is within a specified time, for less than fair market value, and not excluded by policy. Divestment results in a penalty period where the client's expenses for long term care (LTC) services, home and community-based services, home help, and home health are not covered by the client's Medical Assistance (MA) benefits. Department of Human Services Bridges Eligibility Manual (BEM) 405 (July 1, 2014), p 1.

The divestment penalty is applied to the months (or days) an individual is eligible for Medical Assistance (MA) and actually in long term care, home health, home help, or the MIChoice Waiver. The divestment penalty period cannot be applied to a period when the individual is not eligible for Medical Assistance (MA) for any reason. BEM 405, p 13.

To be eligible for Medical Assistance (MA) for a retroactive month, the client must meet all financial and nonfinancial eligibility factors in that month, and have an unpaid medical expense incurred during the month, or have been entitled to Medicare Part A. Department of Human Services Bridges Administrative Manual (BAM) 115 (July 1, 2014), p 13. A client is not eligible for Medical Assistance (MA) in a month they have pre-paid for long term care. When a medical provider is paid by the client, or by a third party on behalf of the client, for medical services received, that month is not a penalty month. BEM 405, p 13.

The Claimant submitted an application for Medical Assistance (MA) and on May 20, 2014, the Department notified the Claimant that this application had been denied with respect to Medical Assistance (MA) and retroactive Medical Assistance (MA) benefits as of March 1, 2014. The Department received the Claimant's request for a hearing on October 6, 2014. This Administrative Law Judge finds that the Claimant's request for a hearing is untimely with respect to the May 20, 2014, Health Care Coverage Determination Notice (DHS-1606) because it was not received by the Department within 90 days of notice to the Claimant.

On May 30, 2014, the Claimant re-applied for Medical Assistance (MA) and requested long term care benefits. On July 7, 2014, the Department notified the Claimant that she was approved for Medical Assistance (MA) as of May 1, 2014, with a \$1,167 monthly patient pay amount, but denying retroactive benefits for April of 2014. The Department also applied a divestment penalty period against the Claimant's long term care benefits from May 1, 2014, through October 31, 2014. This penalty was based on the Claimant's January 7, 2014, transfer of an annuity to another person for less than fair market value and the Claimant's attorney did not dispute that there was a divestment.

The Claimant protested the determination of this penalty to the Department. The Department agreed with the Claimant that the penalty had not been properly determined and on July 23, 2014, the Department notified the Claimant that a divestment penalty would apply against her long term care benefits from May 1, 2014, through July 26, 2014. The Department refused to begin the divestment penalty on April 1, 2014, as requested by the Claimant.


The Claimant does not dispute that her long term care expenses have been paid during April of 2014, but argues that she had unpaid medical expenses that could have been used to establish eligibility for retroactive Medical Assistance (MA) benefits. The Claimant further argues that by establishing an earlier eligibility date for Medical Assistance (MA), that the Department should begin the divestment penalty when eligibility for Medical Assistance (MA) began.

This Administrative Law Judge finds that Bridges Eligibility Manual Item 405 restricts a client from establishing eligibility for long term care during a month where long term care expenses have been paid and also prevents the application of a divestment penalty during these months as well. Department policy includes provisions for modifying the end date of the Claimant's divestment penalty as the Department did in this case, but does not create an entitlement to move the beginning date of a divestment penalty.

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 against the Claimant's long term care benefits from May 1, 2014, through July 26, 2014.

DECISION AND ORDER

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



Kevin Scully
Administrative Law Judge
for Nick Lyon, Acting DHS Director
Department of Human Services

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

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

KS/las

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 48909-07322

cc:

