

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

IN THE MATTER OF:

████████████████████
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Reg. No.: 14-014246
Issue No.: 2008
Case No.: ██████████
Hearing Date: February 11, 2015
County: MACOMB-12 (MT CLEMENS)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 three way hearing was held on February 11, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant's Authorized Hearing Representative, ██████████. Participants on behalf of the Department of Human Services (Department) included ██████████ Facilitator and ██████████ Specialist.

ISSUE

Did the Department properly impose a divestment penalty in September 2014 regarding Claimant's eligibility for Medicaid?

Did the Department properly adjust the Patient Pay Amount for October 2014 due to income received by Claimant on October 31, 2014 for repayment of a promissory note?

FINDINGS OF FACT

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

1. The Claimant applied for Medicaid on September 29, 2014. Exhibit 1, 2014.
2. The Claimant as part of the Application for Medicaid disclosed that she had made gifts of cash to various individuals prior to the application in the amount of ██████████
3. The Department issued a Health Care Coverage Determination Notice on October 8, 2014 advising that the Claimant was not eligible for Department payment of long term care waiver services from September 1, 2014 through October 8, 2014, because the Claimant transferred assets for less than their fair market value. The Divestment penalty was calculated as 39 days and is not in dispute. Exhibit 2.

4. On September 25, 2014, the Claimant executed a promissory note dated September 25, 2014 in the amount of [REDACTED] Exhibit 3.
5. The Claimant received repayment of the note on October 31, 2014 in full. The Department included the note proceeds as income received by the Claimant for October 2014, and recalculated Claimant's Patient Pay amount to be [REDACTED] for the month of October. Exhibit 2. The calculation of the Patient Pay amount is not disputed.
6. The Claimant's Attorney requested a hearing on October 28, 2014 protesting the divestment penalty start date as September 1, 2014 and seeking to have the divestment penalty to begin in October 2014, the same month the promissory note income was received.

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.

Additionally, in this case the facts are undisputed that a divestment occurred and the gifts made by the Claimant which constituted the divestment were included and disclosed with the application for Medical Assistance. In accordance with Department policy, the Department determined that the Claimant transferred cash assets to various individuals and the amount of the transfers are not in dispute. Once a resource is transferred, BEM 405 deems giving an asset away, as was done here, a divestment. BEM 405 (7/1/14 pp. 12). Once a divestment is made, the Department is required to determine a penalty period. In this case, the Department imposed a 39 day penalty period which is also not in dispute. The Claimant imposed a divestment penalty which began September 1, 2014 and ended October 8, 2014. Exhibit 2. The Claimant's attorney representative has requested a hearing challenging the beginning date of the divestment penalty the Department imposed arguing that the divestment should have been applied for October 1, 2014, rather than September 1, 2014.

The Claimant's attorney representative also asserts that the unearned income proceeds from a promissory note should be applied in September 2014 to affect the September 2014 patient pay amount, rather than the October 2014 patient pay amount. The promissory note executed by the Claimant was dated September 25, 2014,

although the unearned income in repayment of the note was received by the Claimant October 31, 2014. Exhibit 3.

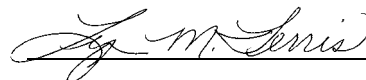
Department policy found in BEM 405 provides that the penalty period for a divestment starts on the date which the individual is eligible for Medicaid and would otherwise be receiving institutional level care (LTC) and is not already part of the penalty period. BEM 405, (7/1/14) pp. 14. The requirement stated in BEM 405 above is clear and concise and requires that the penalty period start on the date the individual is eligible for Medicaid. In this case, the Claimant was eligible for Medicaid on September 1, 2014, and thus the Department correctly applied Department policy BEM 405 when it determined the divestment penalty was to begin September 1, 2014.

The Department is required when budgeting medical assistance to consider income when determining a post-eligibility patient-pay amount (PPA). In this case, the Claimant was eligible for Medical Assistance as of September 1, 2014, and thus the Claimant's situation was post eligibility. Income eligibility and patient pay amounts are determined on a calendar month basis. Once an individual is a recipient, the Department is required to do a future month budget at redetermination and when a change occurs that may affect eligibility or post-eligibility PPA. BEM 530 (7/1/14) p.1. The Department's definition of terms found in Department policy is found in its Glossary of Terms which defines the term "future month: as any calendar month for which MA is being determined that is after the processing month." BPG Glossary (7/1/14) p.28. In this case, the Department adjusted the October 2014 patient pay amount for October 2014 as that was the month the income was received by the Claimant for repayment of the promissory note. Based upon the evidence presented at the hearing it is determined that the Department correctly adjusted the patient pay amount for October 2014 based upon the requirements of Department policy cited above.

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 divestment penalty effective September 1, 2014 and adjusted the patient pay amount for October 2014 based upon Claimant's receipt of income in October 2014 for repayment of the promissory note.

DECISION AND ORDER

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



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: February 17, 2015
Date Mailed: February 18, 2015
LMF / tm

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:

[REDACTED]