

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

**IN THE MATTER OF:**

██████████  
██████████  
██████████  
██████████

Reg. No.: 14-014943  
Issue No.: 2008  
Case No.: ██████████  
Hearing Date: February 5, 2015  
County: Wayne (82-Adult Medical)

**ADMINISTRATIVE LAW JUDGE:** Michael J. Bennane

**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 Detroit, Michigan. Participants on behalf of Claimant included ██████████ ██████████ ██████████ ██████████. Participants on behalf of the Department of Human Services (Department) included ██████████

**ISSUE**

Did the Department properly calculate Claimant's Medical Assistance (MA) divestment?

**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 April 15, 2014, the Department sent Claimant a Long-Term Care Medicaid Redetermination Notice requesting information/documentation by May 1, 2014.
2. On May 19, 2014, the Department sent Claimant a Health Care Coverage Determination Notice informing Claimant that her MA benefits were scheduled to terminate on June 1, 2014.
3. On July 10, 2014, Claimant filed MA and retroactive MA applications.
4. On July 17, 2014, the Department sent Claimant a verification checklist due July 28, 2014.

5. On August 18, 2014, the Department sent Claimant a Health Care Coverage Determination Notice approving Claimant for MA benefits beginning June 1, 2014, with a patient pay amount listed.
6. On October 23, 2014, Claimant's guardian requested a hearing to protest the Department's divestment decision.

### **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.

At the hearing, the Department testified that Claimant's guardian's payments out of his personal checking account and made payable to the long-term care facility constituted the major portion of the Department's divestment finding. The Department cites BEM 405, p.7, as the policy it used in calculating Claimant's divestment amount.

A reading of BEM 405 shows that policy views a contract for prospective services and expenses as a divestment. In addition, the same Departmental policy also presumes that the "(R)elatives who provide assistance or services are presumed to do so for love and affection, and compensation for past assistance or services shall create a rebuttable presumption of a transfer for less than fair market value." BEM 405, p.7.

In the instant case, there is no contract for prospective services and the payments in question by Claimant's guardian are for services delivered to Claimant by the nursing home in which Claimant lived.

In addition, although Claimant's guardian was her relative, the payments were not for services delivered by Claimant's guardian.

Claimant's guardian also testified that other payments were made for various services rendered as well, such as Claimant's cell phone, but no documentation was provided and these expenses may not be excluded from divestment consideration.

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 .
- did not act in accordance with Department policy when it listed payments to Claimant's nursing home made through Claimant's guardian's checking account as divestments.
- failed to satisfy its burden of showing that it acted in accordance with Department policy when it .


### **DECISION AND ORDER**

Accordingly, the Department's decision is

- AFFIRMED.**
- REVERSED.**
- AFFIRMED IN PART with respect to and REVERSED IN PART with respect to .

- THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Recalculate Claimant's divestment amount excluding payments made by Claimant's guardian to Claimant's nursing home.

  
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**Michael J. Bennane**  
Administrative Law Judge  
for Nick Lyon, Interim Director  
Department of Human Services

Date Signed: **3/24/2015**

Date Mailed: **3/24/2015**

MJB / pf

**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]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]