

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-001588
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: March 04, 2015
County: DICKINSON

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 three-way telephone hearing was held on March 4, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Claimant's daughter, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Assistance Payments Supervisor [REDACTED] and Eligibility Specialist [REDACTED].

ISSUE

Did the Department properly impose a two-month penalty period on Claimant's eligibility for Medical Assistance (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 to help pay for long-term care (LTC) on August 30, 2012.
2. Because of cash gifts totaling \$ [REDACTED] Claimant had given to family members prior to her application, the Department calculated she was subject to a penalty period of six months and five days. (Exhibit A Pages 6-8.)
3. The Department imposed the penalty period beginning October 2012.
4. At the time the penalty period began, Claimant was receiving an annuity of \$ [REDACTED] per month for six months, beginning September 2012.

5. For reasons that have not been determined, the Department's computer program ended the penalty period after just four months and five days had passed, and then the Department began paying for her LTC.
6. On December 15, 2014, the Department mailed a notice to Claimant informing her that she would be subjected to penalty period for the remaining two months from January 1, 2015, to February 28, 2015. (Exhibit A Page 1.)
7. The Department received Claimant's hearing request on January 28, 2015.

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.

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 2012 (BEM 405, p 13) was \$ [REDACTED]. The Claimant divested herself of \$ [REDACTED]. When that amount is divided by the average cost of care, the penalty period was correctly determined to be 6.18 months, which is six months and five days. That is not disputed. As explained at page 13 of BEM 405, "The 1st day the client is eligible to receive MA coverage for LTC . . . is the 1st day after the

penalty period ends.” The Department erred in ending the penalty period after four months. Claimant still has two months left of her penalty period.

Exhibit A Page 8 is an excerpt from BEM 405 which includes a chart showing the average cost of care for the years of 2004 through 2015. In 2012, the cost was \$ [REDACTED]. That cost jumped to \$ [REDACTED] in 2013, then increased to \$ [REDACTED] in 2014, and is now at \$ [REDACTED] for 2015. If the Department had imposed the penalty period for six consecutive months in 2012 to 2013, the additional two months would have cost Claimant \$ [REDACTED]. Because she is now into 2015, those additional two months will cost her \$ [REDACTED]. While that might strike the Claimant as unreasonable or inequitable, the undersigned has no discretion to deviate from policy.

This Administrative Law Judge is delegated authority pursuant to a written directive signed by the Department of Human Services Director, which states:

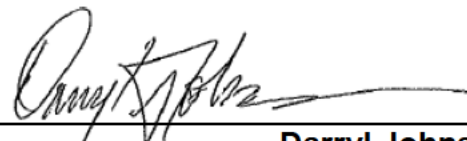
Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

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 the remaining two-month divestment penalty period for January and February 2015.

DECISION AND ORDER

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



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

Date Signed: **3/6/2015**

Date Mailed: **3/6/2015**

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:

