

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-006069
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: July 15, 2015
County: Allegan

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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; and Mich Admin Code, R 792.11002. After due notice, an in-person hearing was held on July 15, 2015, from Allegan, Michigan. Claimant, represented by Attorney [REDACTED], personally appeared and testified. Participants on behalf of the Department of Health and Human Services (Department) included Assistant Attorney General [REDACTED] Long Term Care Specialist [REDACTED] and Assistance Payment Supervisor [REDACTED].

ISSUE

Did the Department properly determine Claimant had divested himself of assets and impose a penalty period?

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 Medicaid (MA) on September 4, 2014.
2. The Department determined Claimant had divested himself of \$ [REDACTED] of assets and mailed Claimant a Health Care Determination dated January 6, 2015, informing Claimant that a divestment penalty would apply from September 1, 2014, through September 9, 2019.
3. Claimant submitted a hearing request, through his attorney, on April 6, 2015.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

Department policy (BEM 405) states:

MA DIVESTMENT

Divestment results in a penalty period in MA, **not** ineligibility. Divestment policy does **not** apply to Qualified Working Individuals (BEM 169).

Divestment means a transfer of a resource by a client or his spouse that:

- . is within a specified time, and
- . is a transfer for LESS THAN FAIR MARKET VALUE, and
- . is not listed below under TRANSFERS THAT ARE NOT DIVESTMENT.

Note: See Annuity Not Actuarially Sound and Joint Owners and Transfers below and BEM 401 about special transactions considered transfers for less than fair market value.

During the penalty period, MA will **not** pay the client's cost for:

- LTC services, and
- home and community based services.
- Home Help, or
- Home Health.

MA will pay for other MA-covered services.

RESOURCE DEFINED

Resource means all of the client's and spouse's assets and income. It includes all assets and income, even countable and/or excluded assets, the individual or spouse receive. It also includes all assets and income that the individual (or their spouse) were entitled to but did not receive because of action by one of the following:

- The client or spouse.
- A person (including a court or administrative body) with legal authority to act in place of or on behalf of the client or the client's spouse.
- Any person (including a court or administrative body) acting at the direction or upon the request of the client or his spouse.

TRANSFER OF A RESOURCE

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. **Not** all transfers are divestment. Examples of transfers include:

- Selling an asset for fair market value (not divestment).
- Giving an asset away (divestment).
- Refusing an inheritance (divestment).
- Payments from a MEDICAID TRUST that are **not** to, or for the benefit of, the person or his spouse. See BEM 401 (divestment).
- Putting assets or income in a trust; see BEM 401.
- Giving up the **right** to receive income such as having pension payments made to someone else (divestment).
- Giving away a lump sum or accumulated benefit (divestment).
- Buying an annuity that is **not** actuarially sound (divestment).
- Giving away a vehicle (divestment).
- Putting assets or income into a Limited Liability Company (LLC)

Transfer for Another Purpose

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.

Exception:

- . Preservation of an estate for heirs or to avoid probate court is **not** acceptable as another purpose.
- . That the asset or income is **not** counted for Medicaid does **not** make its transfer for another purpose.

Department policy indicates that divestment occurs when a client or their spouse transfers a resource within the "look-back period" and for less than "fair market value". BEM 405. Transferring a resource means giving up all or partial ownership in (or rights to) a resource. BEM 405. Further, when a client jointly owns a resource with another person(s), any action by the client or by another owner that reduces or eliminates the client's ownership is considered a transfer by the client. BEM 405. The "look back period" is 60 months prior to the baseline date (for transfers made after February 8, 2006). BEM 405. 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. BEM 405.

Claimant is contesting the Department's calculation of a \$ [REDACTED] divestment and divestment penalty from September 1, 2014, through September 9, 2019.

During the hearing, Claimant's daughter testified that her parents had always paid their bills with cash. She explained that she moved in with her parents after her father's stroke in April, 2012 and helped them to pay their bills. She stated that her parents would write checks to give money to their children and did not give them cash. She said that if one child got money, all the children got money. She testified that her parents did not receive any financial advice.

However, there were numerous inconsistencies with Claimant's daughter's testimony. First, Claimant repeatedly stated that only she lived in the home with her parents after her father's stroke in April, 2012. However, after repeated questioning, Claimant's daughter admitted that it was her and her boyfriend who moved in with her parents in April, 2012, not just her.

Claimant also testified that when her parents would give money to one child, they gave money to all of them, and that it was always given in the form of a check. However, a review of the checks written over the 5 year look back period seldom shows three checks written for the same amount in a short period of time to all three siblings.

Moreover, Claimant's daughter testified that her parents never received financial advice. Yet, Claimant's wife signed a letter indicating that they were following recommended advice to gift monies to avoid probate.

Based on the above inconsistencies, this Administrative Law Judge finds Claimant's daughter's testimony less than credible.

In this case, Claimant is only contesting \$ [REDACTED] of the Department's calculated divestment amount under four separate categories. Claimant is not challenging the gifts of \$ [REDACTED] made after Claimant's stroke in April, 2012, or the \$ [REDACTED] he made in loans to his children after April, 2012.

First, Claimant contends that \$ [REDACTED] was not divestment but falls under transfers for another purpose because these amounts were gifts made prior to Claimant's stroke in April, 2012, and followed a pattern of giving. Claimant explained the gifts were made upon advice of legal counsel to keep Claimant's estate lower than the applicable estate tax exemption.

The Department points out that preservation of an estate for heirs or to avoid probate court is **not** acceptable as another purpose. BEM 405. The Department noted that Claimant's wife submitted a signed letter dated June 20, 2014, (See Claimant Ex. 21), explaining she and her husband were not gifting in anticipation of needing Medicaid benefits, but were gifting because of federal tax concerns and the recommended plan of gifting was to reduce the estate taxes on their estates.

Based on the evidence presented, this Administrative Law Judge finds the Department properly found the \$ [REDACTED] was divestment because it was not a transfer for other purposes, but transfers to avoid probate court.

Secondly, Claimant argues that \$ [REDACTED] was not divestment but asset conversion and transfer for another purpose. Claimant contends the \$ [REDACTED] was cash that was withdrawn by Claimant to pay for the couples' household expenses from September, 2009, through September, 2013. Claimant noted the amounts withdrawn averaged out to \$ [REDACTED] a month for 49 months. Claimant's daughter testified that her Dad's hobby was auctions and her mother's hobby was quilting and that they would pay for their purchases in cash. In addition, Claimant's daughter explained that her parents paid for their groceries and gas in cash.

The Department requires verification for all withdrawals during the 5-year look back period. Because Claimant was unable to provide receipts, the Department found that Claimant was unable to verify they received fair market value for their purchases. Claimant argued that because these were cash transactions, he was unable to provide receipts for the purchases.

The Department noted there was no clear pattern of withdraws as there usually would be for living expenses. In addition the amounts of monies withdrawn were irregular. Due to the irregular pattern and amounts, the Department found the \$ [REDACTED] was divestment.

Based on a review of Claimant's cash withdraws, the lack of a pattern, and the large amounts withdrawn in short time intervals, for example 11 withdraws of \$ [REDACTED] in January, 2011 over a period of 11 days, this Administrative Law Judge finds the \$ [REDACTED] was divestment.

Third, Claimant contends that \$ [REDACTED] was not divestment but an asset conversion and transfer for another purpose. The Department agreed, and the \$ [REDACTED] is no longer considered divestment.

Lastly, Claimant argues that \$ [REDACTED] was not a divestment but an asset conversion and transfer for another purpose. The Department agreed that \$ [REDACTED] is no longer considered a divestment. Claimant conceded the \$ [REDACTED] was no longer at issue.

The Department conceded at the end of the lengthy hearing that of the \$ [REDACTED] divestment, \$ [REDACTED] was a typo, \$ [REDACTED] was the total of checks verified and \$ [REDACTED] was also verified for a total of \$ [REDACTED] which is no longer considered divestment.

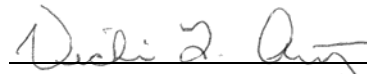
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it found that based on a series of errors and verifications, the total divestment was not \$ [REDACTED] but \$ [REDACTED]

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the divestment amount and **REVERSED IN PART** with respect to divestment penalty.

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. Redetermine the divestment penalty based on the new divestment amount of \$ [REDACTED]



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **8/4/2015**

Date Mailed: **8/4/2015**

VLA/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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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:

