

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

IN THE MATTER OF:



Reg. No.: 15-007262
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: July 16, 2015
County: Barry

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, a telephone hearing was held on July 16, 2015, from Lansing, Michigan. Participants on behalf of Claimant included his daughter [REDACTED] and son-in-law [REDACTED]. Participants on behalf of the Department of Health and Human Services (Department) included Assistance Payment Supervisor [REDACTED] and Eligibility Specialist [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 entered a long term care facility on March 21, 2015.
2. On March 21, 2015, Claimant applied for Medicaid (MA).
3. The Department determined Claimant had divested himself of \$ [REDACTED] of assets and mailed Claimant a Health Care Coverage Determination Notice dated April 13, 2015, informing Claimant that a divestment penalty would apply from April 1, 2015, through April 7, 2015.
4. Claimant's daughter submitted a hearing request on April 30, 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).

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 the client's and his 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.

The facts of this case are not in dispute. On December 11, 2010, Claimant withdrew \$ [REDACTED] from his checking account. On February 1, 2011, Claimant gave his daughter and son-in-law \$ [REDACTED] as a wedding gift.

Claimant's daughter credibly testified that her father (Claimant) gave his children and grandchildren a \$ [REDACTED] each at Christmas time. Her testimony is supported by the check written by Claimant on December 11, 2010, for \$ [REDACTED] with "Xmas 2010" written on the memo line. Claimant's daughter presented a list of the children and grandchildren which totaled 17. Claimant explained that her father stopped making the Christmas gifts

in 2010, when he learned in 2011 that even the Christmas gifts could be considered divestment if he were to need long term care in the future.

Claimant's daughter also presented evidence from Claimant's primary care physician from a December 27, 2010, office visit indicating Claimant was alert and oriented and was being treated for sinusitis. The only medication Claimant was taking at the time was Synthroid.

On review of the testimony and medical records, this Administrative Law Judge finds convincing evidence that the \$ [REDACTED] was transferred for another purpose. At the time Claimant made the Christmas gifts in 2010 totaling \$ [REDACTED] and the wedding gift of \$ [REDACTED] the following February, Claimant had no reason to believe he would require long term care services.

This is supported by the fact that not everyone enters long term care before dying. Some die in their sleep, some from a heart attack or stroke, and some by accident. Not everyone enters long term care.

Therefore, this 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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it found Claimant had divested himself of \$ [REDACTED] back in 2010 and 2011 with the intent to avoid paying for long term care.

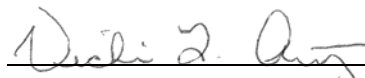
DECISION AND ORDER

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

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. Reverse the finding that Claimant had a divestment of \$1,900.
2. Process the March 21, 2015, without a divestment penalty.

It is SO ORDERED.



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

Date Signed: **8/5/2015**

Date Mailed: **8/5/2015**

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:

