

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-009697
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: August 11, 2015
County: Grand Traverse

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 August 11, 2015, from Traverse City, Michigan. Participants on behalf of Claimant included Authorized Hearing Representative [REDACTED], Director of [REDACTED]. Participants on behalf of the Department of Health and Human Services (Department) included Family Independence Manager [REDACTED] and Eligibility Specialist [REDACTED].

ISSUE

Whether the Director of Claimant's Medical Care Facility could act as Claimant's Authorized Hearing Representative?

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 was a Medicaid recipient at all times relevant to this hearing.
2. On March 21, 2014, Claimant quit claimed his property at [REDACTED], [REDACTED], to his cousins. (Dept. Ex A, pp 15, 49).
3. On November 26, 2014, the Department mailed Claimant a Verification Checklist, requesting verification of his home by mortgage or deed or current property tax records, due by December 8, 2014. (Dept. Ex A, p 43-45).

4. On December 3, 2014, the Department received a fax from Claimant's financial power of attorney, [REDACTED], informing the Department Claimant had deeded his property to a cousin for no consideration on March 21, 2014, in order to avoid a foreclosure sale. The property was set for a real estate tax foreclosure on March 31, 2014. As of 2012, the property had been assessed with an SEV of \$ [REDACTED] (Dept. Ex A, p 46).
5. The Department used the 2012 winter tax bill from [REDACTED] with an SEV of \$ [REDACTED] valuing the property at \$ [REDACTED]
6. On December 8, 2014, the Department mailed Claimant a Health Care Coverage Determination Notice informing Claimant his Medicaid Application had been approved with a penalty period in place. The Notice indicated that Medicaid would not pay for Claimant's long-term care services from January 1, 2015, through May 28, 2016, because he had transferred assets for less than fair market value. (Dept. Ex A, pp 29-30)
7. On February 10, 2015, the Department mailed Claimant the Long-Term Care Medicaid Redetermination Notice, due March 2, 2015. (Dept. Ex A, p 40).
8. On March 10, 2015 the Department mailed Claimant a Health Care Coverage Determination Notice informing Claimant his Medicaid Application had been approved with a penalty period in place. The Notice indicated that Medicaid would not pay for Claimant's long-term care services from January 1, 2015, through May 28, 2015, because he had transferred assets for less than fair market value. (Dept. Ex A, pp 12-13; 28-39).
9. Claimant submitted a request for hearing and an application for Undue Hardship on June 5, 2015.
10. On receipt of Claimant's hearing request, the Department promptly notified Adult Protective Services and requested an immediate investigation.
11. Claimant's physician, [REDACTED], submitted a letter to the Department dated June 1, 2015. According to [REDACTED], Claimant is diagnosed with type 2 diabetes, chronic renal disease, hypertension, atrial fibrillation, cholelithiasis and depression with anxiety. Claimant is unable to walk and uses an electric wheelchair for locomotion. He is completely dependent on staff to provide for his needs. Staff prepares all meals, dresses him, transfers him in and out of bed, and assists him with toileting and bathing. The physician indicated Claimant has not been able to live independently since his stroke in 2000. (Dept. Ex A, p 17).
12. On June 9, 2015, the Department denied Claimant's request for Undue Hardship. (Dept. Ex C).

13. On June 24, 2015, a Prehearing Conference was held. In attendance were Ms. [REDACTED] of [REDACTED], and Family Independence Manager [REDACTED] and Eligibility Specialist [REDACTED] on behalf of the Department. [REDACTED] chose not to attend. (Dept. Ex B, p 1).
14. Based on the new information received during the Prehearing Conference, the Department obtained an updated SEV of \$ [REDACTED] based on the property's poor condition and re-evaluated the divestment penalty based on the property's new value of \$ [REDACTED]. On June 26, 2015, the Department sent Claimant an updated Benefit Notice indicating the divestment period was changed to January 1, 2015, through February 10, 2016, based on the new valuation. (Dept. Ex A, p 18; Dept. Ex B, p 2.).

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).

As an initial matter, under 42 CFR § 431.923, Claimant has a right to appoint an organization as his representative. Therefore, Ms. Lisa Ashley can act as the Authorized Hearing Representative in this case and Claimant's previous execution of a power of attorney in favor of Paul Taylor has no effect on Claimant's ability to appoint another Authorized Hearing Representative to represent him in handling this divestment issue.

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 Department of Human Services) 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. During the penalty period, MA will not pay for long-term care services. *Id.* 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"). *Id.* Transferring a resource means giving up all or partial ownership in, or rights to, a resource. *Id.* Resource means all the client's (and spouse's) assets and income. *Id.*; 20 CFR 416.1201. Less than FMV means the compensation received in return for a resource was worth less than the FMV of the resource. BEM 405.

The first step in determining the period of time that transfers can be looked at for divestment is to determine the baseline date. BEM 405. The baseline date (applicable in this case) is the date which the client was an MA applicant and in a long-term care facility. *Id.* After the baseline date is established, the look-back period is established. BEM 405. The look-back period is 60 months for all transfers made after February 8, 2006. *Id.* Transfers made by anyone acting in place of, on behalf of, at the request of, or at the direction of the client/spouse during the look-back period are considered. *Id.*

In this case, Claimant had a stroke in 2000, and has not lived in his house at [REDACTED], since. Claimant has been residing at [REDACTED] for the past three years. Claimant's Authorized Representative is [REDACTED], a licensed attorney in Wisconsin. According to Claimant, Mr. Walker is a close friend.

In March, 2014, Claimant received a notice of tax foreclosure on his property at [REDACTED]. This house had been left to him by his parents. After receiving the tax foreclosure, Claimant mentioned it to two cousins who were visiting another person at [REDACTED]. After discussing the tax foreclosure with them, he agreed to quit claim the property so that the house could stay in the family. According to Claimant, the cousins agreed to pay the back taxes and the house would be fixed up so someone in the family could live there. Claimant consulted with [REDACTED] regarding the quit claim, and [REDACTED] said it would be okay for him to transfer his house to his cousins.

On March 21, 2014, Claimant quit claimed by warranty deed his property at [REDACTED] to his cousins. The cousins have not had any contact with Claimant since he signed the quit claim deed. Tax records indicate the back taxes of \$ [REDACTED] were paid on March 26, 2014, avoiding the March 31, 2014, foreclosure.

During the Redetermination in December, 2014, [REDACTED] wrote the Department that Claimant had quit claimed his property at [REDACTED], for no consideration.

Upon the Department receiving the hearing request from the Authorized Hearing Representative, [REDACTED], the Director of [REDACTED], the Department immediately called Adult Protective Services and requested an investigation.

As of the date of the hearing, the Department representative testified the property at [REDACTED], was listed for \$ [REDACTED]

Claimant contends he was not informed of a possible Medicaid sanction or divestment penalty he could be subjected to as a result of quit claiming his property to his cousins for no consideration. As a result of the divestment, Claimant is in the process of going through the courts for Conservatorship and once the Conservatorship is established,

Claimant intends to rescind his appointment of [REDACTED] as his financial power of attorney.

The Department and Claimant's Authorized Hearing Representative, [REDACTED], are looking into pursuing civil as well as criminal actions against [REDACTED] and Claimant's cousins based on the fact that Claimant lost his property without proper guidance and counseling and is now subject to a divestment penalty. His cousins only paid the back taxes of \$ [REDACTED] and have listed the property for \$ [REDACTED]

Based on the facts presented by the Authorized Hearing Representative and the Department during the hearing, it appears that Claimant was allegedly defrauded of his property and his cousins are set to gain an unconscionable windfall of almost \$ [REDACTED] at Claimant's expense, while he remains bedridden in a nursing home.

While the Department, the Authorized Hearing Representative and this Administrative Law Judge are all in agreement that Claimant should not be penalized but was in fact taken advantage of, the policy directs this Administrative Law Judge to find there was a divestment.

Here, the Department found Claimant to have divested of assets, namely his house at [REDACTED], for less than fair market value. Although the quit claim (warranty deed), indicates he received \$ [REDACTED] in return for the quit claim, Claimant's Authorized Hearing Representative testified that Claimant told her he did not receive any monies, and [REDACTED] wrote a letter to the Department indicating Claimant received no consideration in exchange for the quit claim deed.

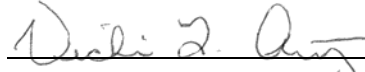
Therefore, there is no argument that Claimant did not receive Fair Market Value for the exchange (quit claim) of his property.

Based on the information available to the Department, the Administrative Law Judge finds the Department properly determined and applied the divestment in this case.

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 and penalty period of January 1, 2015, through February 10, 2016.

DECISION AND ORDER

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



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

Date Signed: **8/18/2015**

Date Mailed: **8/18/2015**

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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:

