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

**IN THE MATTER OF:**

[redacted]

Reg. No.: 14-011844-RECON
14-011844
Issue No.: 2001
Case No.: [redacted]
Hearing Date: December 17, 2014
County: Ingham

## DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Supervising Administrative Law Judge pursuant to the Department of Health and Human Services (Department's) Request for Rehearing and/or Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge at the conclusion of the hearing conducted on December 17, 2014, and mailed on December 23, 2014, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015 and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs that is the basis for the claimant's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Reconsideration was mailed on April 21, 2015.

## ISSUE

Whether the ALJ erred in reversing the Department's determination concerning Appellant's Medical Assistance (MA) or "Medicaid" eligibility and divestment period?

## FINDINGS OF FACT

The Supervising Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Findings of Fact Numbers 1 through 7 under Registration Number 14-011844 are incorporated by reference.

2. On December 17, 2014, a hearing was held resulting in a Hearing Decision mailed on December 23, 2014.

3. On January 14, 2015, the Michigan Administrative Hearing System (MAHS) received the Department's Request for Rehearing and/or Reconsideration.

4. On April 21, 2015, the MAHS issued an Order Granting Reconsideration.

## CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of 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).

A divestment determination is **not** required unless, sometime during the month being tested, the client was in a penalty situation. BEM 405 (7-1-2014), page 5. To be in a penalty situation, the client must be eligible for MA (other than QDWI) and be one of the following: (1) In an LTC facility; (2) APPROVED FOR THE WAIVER; see BEM 106; (3) Eligible for Home Help; or (4) Eligible for Home Health. BEM 405, page 6.

The penalty is applied to the months (or days) an individual is eligible for Medicaid and actually in LTC, Home Health, Home Help, or the MIChoice Waiver. The divestment penalty period cannot be applied to a period when the individual is not eligible for Medicaid for any reason (that is the case closes for **any** reason or is eligible for Medicaid but is **not** in LTC, Home Help, Home Health, or the MIChoice Waiver. Restart the penalty when the individual is again eligible for Medicaid and in LTC, Home Help, Home Health, or MIChoice Waiver. When a medical provider is paid by the individual, or by a third party on behalf of the individual, for medical services received, that month is not a penalty month. That month cannot be counted as part of the penalty period. This does not include payments made by commercial insurance or Medicare. See Resources Returned in this item. BEM 405, p. 13.

**Note:** An individual is not eligible for MA in a month they have pre-paid for LTC. Because federal law directs that a resident in a nursing facility must have access to all monies held by the facility for the resident, count the money held by a nursing facility as cash. BEM 405, p.13.

A group 2 deductible eligible individual is not eligible for Medicaid until the deductible is met. Apply the penalty only to the days of the month after the deductible is met. BEM 405, p.13.

The 1st day the client is eligible to receive MA coverage for LTC, MIChoice, home help, or home health services is the 1st day after the penalty period ends. BEM 405, p.13.

The penalty period starts on the date which the individual is eligible for Medicaid and would otherwise be receiving institutional level care (LTC, MIChoice waiver, or home help or home health services), and is not already part of a penalty period. When a medical provider is paid by the individual, or by a third party on behalf of the individual, for medical services received, the individual is not eligible for Medicaid in that month and the month is not a penalty month. That month cannot be counted as part of the penalty period. This does not include payments made by commercial insurance or Medicare. BEM 405, p.14.

In this matter, the parties did not dispute the salient facts. However, the parties sharply disagreed about how Department policy should be applied to those facts. After the Appellant entered a nursing home, she applied for Long Term Care Medicaid on May 29, 2014. (Exhibit 1, pp 10-18) The parties also agreed that Appellant had given gifts over the past five years which resulted in a divestment in the amount of $[redacted] (Exhibit 1, pp 17-18) There was also no dispute that the Appellant, at the time of application, owed the nursing home $[redacted] for care received in May, 2014. (Appellant's Response Brief, p 9) Following the time Appellant applied for Medicaid, but before the Department had finished processing her application, the Appellant had paid her balance in full.[1] The Department determined that Appellant was not eligible for Medicaid for May, 2014 because she had paid her balance in full and had a $0.00 balance for the month of May. Accordingly, the Department found that Appellant's divestment period was from June 1, 2014 through June 20, 2014.

The Appellant contends that the Appellant was eligible for Medicaid because she met all of the criteria at the time she submitted her application on May 29, 2014. Accordingly, the Appellant argues that the Department should have determined that she was eligible for Medicaid, with a divestment penalty period, effective May 1, 2014 rather than June 1, 2014. The Appellant argues that the fact that she, at the time of the application, had an unpaid balance with the nursing home, she was eligible for Medicaid.

The Department, on the other hand, argues that when Appellant paid the $[redacted] balance at the nursing home, she was no longer eligible for Medicaid during the month of May, 2014. Accordingly, the Department contends, the Appellant was not eligible for Medicaid until June 1, 2014 and that is when the divestment period should begin.

Thus, the central issue in this matter is whether the Department properly determined that Appellant was not eligible for Medicaid in May, 2014. The Administrative Law Judge determined that Appellant paid for her nursing home care using her countable assets, which was less than the average monthly private pay LTC cost, and that after she had spent down her countable assets, she was eligible for Medicaid in May, 2014. (Hearing Decision, p. 3)

[1] Claimant did have other medical bills at the time.

The ALJ did not indicate why the Appellant, under BEM 405, pp 13-14, was eligible for Medicaid during May, 2014, when she did not have any pending nursing home costs at the time the Department processed the application. BEM 405, page 13, clearly provides that "an individual is not eligible for MA in a month they have pre-paid for LTC." In addition, BEM 405 directs that the penalty period starts on the date which the individual is eligible for Medicaid and would otherwise be receiving institutional level care (LTC, MIChoice waiver, or home help or home health services), and is not already part of a penalty period. See BEM 405, p. 14. In this case, the Appellant was not eligible for Medicaid during May, 2014 as she had paid her balance at the nursing home at the time the Department processed the application.

During the processing of Appellant's Medicaid application, the Department's Eligibility Specialist (E.S.) testified that she called the nursing home and found that Appellant' had private paid in full for the month of May. Appellant cannot be found to be eligible for Medicaid before the Department can ascertain that she meets all the eligibility criteria. Here, Appellant was not eligible for Medicaid because the objective evidence shows that she pre-paid for LTC. See BEM 405, p. 14.

The Department's initial determination that Appellant was not eligible for Medicaid during May and that her divestment period begins June 1, 2014 was correct. BEM 405, page 14 is unambiguous that when a medical provider is paid by the individual, or by a third party on behalf of the individual, for medical services received, the individual is not eligible for Medicaid in that month and the month is not a penalty month. It further provides that the month (of Medicaid ineligibility) cannot be counted as part of the penalty period.

Accordingly, the undersigned finds that the ALJ erred in reversing the Department's determination concerning Appellant's Medical Assistance (MA) or "Medicaid" eligibility and divestment period.

## DECISION AND ORDER

The Supervising Administrative Law Judge, based on the above findings of fact and conclusions of law, VACATES the ALJ's Hearing Decision under Registration Number 14-011844 and **AFFIRMS** the Department's July 17, 2014 determination.

IT IS SO ORDERED.

**C. Adam Purnell**
Supervising Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: September 15, 2015

Date Mailed: September 15, 2015

**NOTICE:** The law provides that within 30 days of receipt of the this Decision, the Claimant may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

CAP/LAS

cc: [redacted]