

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

IN THE MATTER OF:



MAHS Reg. No.: 15-015373
Issue No.: 2008
Agency Case No.: [REDACTED]
Hearing Date: October 29, 2015
County: GRAND TRAVERSE

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, telephone hearing was held on October 29, 2015, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant's son-in-law [REDACTED] as her authorized hearing representative. [REDACTED] represented the Department of Health and Human Services (Department). Witnesses on behalf of the Department included [REDACTED].

ISSUE

Did the Department of Health and Human Services (Department) properly determine the fair market value of real property used to determine a divestment penalty?

FINDINGS OF FACT

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

1. On May 29, 2015, the Department received the Claimant's application for long term care (LTC) Medical Assistance (MA).
2. On the application for long term care (LTC), the Claimant disclosed the sale of real property with a sale price of \$ [REDACTED] with a disbursement date of October 16, 2014.
3. The property sale was not an arm length transaction because the buyer was a relative of the Claimant.
4. On September 3, 2013, a real estate salesperson offered a written opinion that the real property should be listed for sale with a price of \$ [REDACTED].

5. The roof of a home on the real property was replaced on or around July 14, 2014.
6. On September 16, 2014, a licensed appraiser issued a written opinion that the fair market value of the real property was \$ [REDACTED].
7. On May 23, 2015, the state equalized value (SEV) of the real property that was sole was \$ [REDACTED].
8. On June 18, 2015, the Department notified the Claimant that a divestment penalty would be assessed from July 1, 2015, through October 5, 2015.
9. On August 27, 2015, the Department received the Claimant's request for a hearing protesting the Department's determination of a divestment penalty applied towards her Medical Assistance (MA) benefits.

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, 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.

Assets means cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. Personal property is any item subject to ownership that is not real property. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (October 1, 2014), pp 1-7.

Divestment means a transfer of a resource by a client or his spouse that is within a specified time, for less than fair market value, and not excluded by policy. Divestment results in a penalty period where the client's expenses for long term care (LTC) services, home and community-based services, home help, and home health are not

covered by the client's Medical Assistance (MA) benefits. Department of Human Services Bridges Eligibility Manual (BEM) 405 (January 1, 2015), p 1.

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, p 6. By definition a transaction between two relatives is not an arm length transaction. Department of Health and Human Services Bridges Policy Glossary (BPG), p 6.

The following prove ownership and/or value of assets:

- Real Property
 - Deed, mortgage, purchase agreement or contract.
 - State Equalized Value (SEV) on current property tax records multiplied by two.
 - Attorney or court records.
 - County records.
 - Statement of real estate agent or financial institution.
 - BEM 400, pp 58-60.

On May 29, 2015, the Department received the Claimant's application for long term care. The Claimant disclosed the sale of real property with a sale price of \$ [REDACTED] and a disbursement date of October 16, 2014, on this application. The Department determined that this sale of real property was within the look back period, a divestment since it was not an arm length transaction at a fair market price, and therefore a divestment penalty should apply based on a fair market value of \$ [REDACTED].

The Department determined the fair market value of the real property from the written opinion of a licensed appraiser issued on September 16, 2014, that set a fair market value of \$ [REDACTED].

The Claimant's representative argued that the September 16, 2014, appraisal was not a realistic estimation of the property's fair market value. The Claimant's representative argued that the Department failed to rely on evidence from a real estate professional supporting a lower fair market value. The Claimant's representative testified that the final sale price was adjusted to account for the replacement of a roof by the buyer.

The Department's representative testified that the September 3, 2013, real estate salesperson's opinion was over a year old and therefore was an unreliable indicator of fair market value on the sale date. The Department's representative found the appraisal to be a more reliable indicator of value than what could have been determined by doubling the state equalized value (SEV), which was a higher amount.

This Administrative Law Judge finds that the real property transaction was not an arm length transaction because the buyer was a relative of the Claimant. Therefore, it was reasonable for the Department to rely more on objective information, such as the written appraisal, when determining the fair market value of the property. It was also reasonable for the Department to exclude the roof replacement from consideration since these repairs would have been considered in the appraisal price that was set after the repairs were completed. Furthermore, an arm length transaction sale price that had been adjusted based on the roof replacement would have been clearly included in the language of the purchase agreement.


This Administrative Law Judge finds the September 16, 2014, appraisal of the real property reasonably relied on the sales of comparable properties in the area. The evidence on the record does not support a finding that this appraisal was unreliable simply because it was requested for the purpose of obtaining a mortgage.

Furthermore, another appraisal and comparable sales data that was not available to the Department when processing the Claimant's application for long term care (LTC) cannot be applied after the fact when determining whether the Department's determination was in accordance with BEM 405.

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 determined the fair market value of the real property sold by the Claimant, and therefore properly applied a divestment penalty against her long term care (LTC) Medical Assistance (MA) benefits.

DECISION AND ORDER

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



Kevin Scully
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **11/10/2015**

Date Mailed: **11/10/2015**

KS/■

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:

