

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

IN THE MATTER OF:



Reg. No.: 15-001899
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: April 9, 2015
County: Clare

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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, a telephone hearing was held on April 9, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Claimant's wife, [REDACTED]. Also participating was [REDACTED], Business Office Manager for [REDACTED] - Clare, the facility where Claimant is staying. Participants on behalf of the Department of Human Services (Department) included General Services Program Manager [REDACTED].

ISSUE

Did the Department properly impose a divestment penalty period on Claimant's Medicaid (MA) eligibility?

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 Long-Term Care (LTC).
2. On October 14, 2014, the Department issued a LTC Redetermination Notice to Claimant.
3. A partial Redetermination was returned to the Department (Exhibit A Pages 2-9) on November 3, 2014, but important information was missing.
4. On November 17, 2014, a Verification Checklist (VCL) was mailed to Claimant with a due date of December 1, 2014.

5. The Business Manager at Claimant's LTC facility emailed to the Department on November 25, 2014, requesting an extension for responding to the VCL.
6. The Department extended the deadline to December 5, 2014.
7. On December 5, another extension was requested; the deadline was extended to December 15, 2014.
8. On December 15, 2014, the Business Manager provided information to the Department regarding the sale of the home that had been owned by Claimant and his wife.
9. The Department determined that Claimant sold a home and land, valued at \$ [REDACTED] for \$ [REDACTED] resulting in a divestment of \$ [REDACTED]
10. The Department established Claimant's baseline date as 2012, when the average monthly cost of care was \$ [REDACTED] resulting in a penalty period of 7 months 24 days, which would be served from February 1, 2015, to September 24, 2015. See Exhibit A Page 26.
11. The Department received Claimant's hearing request on February 2, 2015.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of 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 Family Independence Agency) 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 (7/1/14), p. 1. 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"). BEM 405, p. 1. Less than FMV means the compensation received in return for a resource was worth less than the FMV of the resource. BEM 405, p. 5. Transferring a resource means giving up all or partial ownership in, or rights to, a resource. BEM 405, p. 2. The giving away of an asset results in divestment. BEM 405, p. 2. During the penalty period, MA will not pay for long-term care services. BEM 405, p. 1.

BEM 405 at page 12 instructs the Department to: "Divide the total Uncompensated Value by the average monthly private LTC Cost in Michigan for the client's Baseline Date. This gives the number of full months for the penalty period. Multiply the fraction remaining by 30 to determine the number of days for the penalty period in the remaining partial month. Apply the total penalty months and days. Apply a penalty even if the total amount of the penalty is for only a partial month."

The average monthly cost of care for 2012 (BEM 405, p 13) was \$ [REDACTED]. The Department found that Claimant and his wife divested themselves of \$ [REDACTED]. They arrived at that amount by taking the publicly-reported State Equalized Value (SEV) for the property of \$ [REDACTED] and multiplying that times two, to arrive at \$ [REDACTED]. Then, they subtracted from that the \$ [REDACTED] sale price of the home, leaving \$ [REDACTED]. The Department set Claimant's baseline in 2012 and used an average monthly cost of care of \$ [REDACTED]. BEM 405 includes a chart showing the average monthly cost of care for the years of 2004 through 2015. In 2012, the cost was \$ [REDACTED]. That cost jumped to \$ [REDACTED] in 2013, then increased to \$ [REDACTED] in 2014, and is now at \$ [REDACTED] for 2015. It is unclear whether the Department intended to use the figure from 2012 or 2013. Since no evidence was presented regarding Claimant's admission to LTC, this Decision will accept the cost used by the Department.

The Department erred in its calculation of the penalty period. Assuming the SEV was a fair estimate of the property's value, the stated divestment of \$ [REDACTED] divided by the average monthly cost of care (\$ [REDACTED] equals 7.20 months, or 7 months and six days. The Department calculated 7 months and 24 days.

After the Department calculated the penalty period, the Claimant's wife obtained an appraisal of the property. The appraisal is found in Exhibit A at pages 47-67. The appraisal found the property to have a value of \$ [REDACTED]. The appraisal is believed to be more reliable as an indicator of the property's value than an equalization report. Claimant's wife testified during the hearing regarding the condition of the land. It was a [REDACTED] mobile home on 15 acres of land, with a well and septic tank, a dirt driveway and a dirt road. The wife was unable to mow the yard or plow the drive. A great deal of "junk" had been accumulated on the land over the [REDACTED] years that the couple had lived there. The mobile home's roof was falling in. Without her husband at home she felt she had no real choice but to sell it.

Claimant's son-in-law knew someone who was interested in buying the land as a place to deer hunt. A deal was struck that called for \$ [REDACTED] to be paid for the land, and another \$ [REDACTED] held aside to cover the cost of cleaning up the land. If the cleanup cost were less than \$ [REDACTED] the difference would be paid to Claimant and his wife. The property was sold in February 2014. Claimant's wife received the \$ [REDACTED] but nothing has been received since then, and the cleanup remains on-going.

The wife took the \$ [REDACTED] and spent nearly all of it. She and her daughter took a trip to [REDACTED] to visit her son. She paid for new tires for the daughter's van to be sure they

had tires safe for making the long trip. She spent \$ [REDACTED] on repairs to her own vehicle. Another \$ [REDACTED] was spent on clothing for Claimant and the wife. An itemization is found in Exhibit A Page 27.

Included in her spending were gifts to the couple's children and grandchildren. She gave \$ [REDACTED] total. Out of the \$ [REDACTED] she received, she accounted for \$ [REDACTED] in spending, plus \$ [REDACTED] that she still had in cash as of December 2014.

The issue here is whether the Department properly imposed a penalty period of 7 months and 20 days based upon the sale of the home. The evidence is persuasive that the Department erred.

Claimant and his wife sold their home. They had hoped to get \$ [REDACTED] for it, but because of its deplorable condition they only received \$ [REDACTED] with the potential of receiving at most \$ [REDACTED] more. With more than a year having passed between the sale and hearing date, it seems unlikely that any more will be received. There is no evidence that there is any value to that contingent payment, and that amount will not be counted as an asset. See BEM 400 (4/1/15) page 41. The home had an appraised value of \$ [REDACTED]. The appraiser noted in his addendum (Exhibit A Page 63) that the site "had hundreds of used tires, junk cars, old oil drums, numerous old boats, and numerous piles of scrap. The above items are of a negative value to the subject site. An estimated cost of \$ [REDACTED] will be given for clean-up for the above items.

"At time of inspection, DEQ was investigating the subject site. The 'as-is' basis is premised upon the Extraordinary Assumption that no additional cost will be incurred for clean-up or fines, and if found not to be that, the value would be negatively impacted."

The conclusion is that the only divestment that occurred is when the wife gave \$ [REDACTED] to their children and grandchildren. Claimant is subject to a penalty period reflecting that divestment.

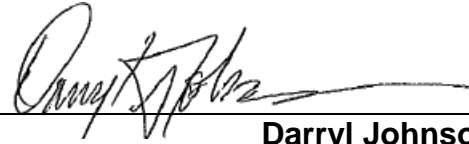
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it imposed a penalty period on Claimant.

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. Redetermine Claimant's eligibility for MA as of February 1, 2015,;
2. Provide Claimant with MA benefits that he is otherwise eligible to receive, based upon a divestment of \$ [REDACTED]



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **4/10/2015**

Date Mailed: **4/10/2015**

DJ/jaf

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 party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (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.

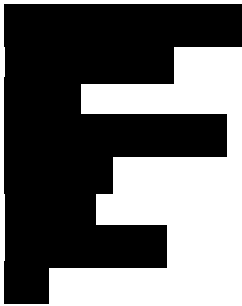
A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

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:

A large black rectangular redaction box covering several lines of text in the 'cc:' field.