

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-004687
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: June 2, 2015
County: Charlevoix

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 June 2, 2015, in Petoskey, Michigan. Participants on behalf of Claimant included Attorney [REDACTED]. Participants on behalf of the Department of Health and Human Services (Department) included Eligibility Specialist [REDACTED] and Assistant Attorney General [REDACTED].

ISSUE

Did the Department properly apply a divestment penalty to Claimant based on Claimant's son's purchase of household goods?

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 Medicaid on January 28, 2015. Claimant had been a resident of the nursing home since November 20, 2014.
2. On March 10, 2015, the Department issued a Health Care Coverage Determination Notice informing Claimant that divestment included gift to son of \$ [REDACTED] and \$ [REDACTED] of expenses not allowed. \$ [REDACTED] household goods. \$ [REDACTED] UPS. \$ [REDACTED] bed and mattress. \$ [REDACTED] sofa sleeper. Total divestment of \$ [REDACTED] divided by \$ [REDACTED] or 2 months 9 days. Divestment will end on March 9, 2015.
3. On March 20, 2015, Claimant's authorized hearing representative filed a Request for an In-Person Hearing contesting the penalty for divestment in regard to long term care services.

4. For ease of use, the following table has been created from receipts supplied by Claimant showing the itemized list of expenditures totaling \$ [REDACTED]

Date Purchased	Quantity	Item	Price
1/10/2015	1 set	Glassware	\$ [REDACTED]
	6	Bath washcloths	\$ [REDACTED]
	2 sets	Dinnerware	\$ [REDACTED]
	6	Washcloths	\$ [REDACTED]
	1	Bathroom rug	\$ [REDACTED]
	3 sets	Sheets	\$ [REDACTED]
	6	Quilted pillows	\$ [REDACTED]
	3 sets	Comforter set	\$ [REDACTED]
	3	Blanket	\$ [REDACTED]
	2	Bath towels	\$ [REDACTED]
	1 set	16-piece cookware	\$ [REDACTED]
			Total
1/12/2015	2 sets	Queen set/Mattress	\$ [REDACTED]
	2	Bolt on frames	\$ [REDACTED]
		Total	\$ [REDACTED]
1/12/2015	1	Sofa Sleeper	\$ [REDACTED]
	1	Year Warranty	\$ [REDACTED]
	1	Delivery	\$ [REDACTED]
		Total	\$ [REDACTED]
12/22/2014	1	UPS Charge	\$ [REDACTED]

CONCLUSIONS OF LAW

As a preliminary matter, Claimant is not contesting the gift of \$ [REDACTED] made to his son. The only issue is whether the remaining purchases totaling \$ [REDACTED] were household goods and exempt from divestment.

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The issue in this case is the proper application of Divestment. Divestment results in a penalty period in Medicaid, not ineligibility. BEM 405, p 1, 4/1/2011.

Divestment is a type of transfer of a resource and not an amount of resources transferred. Divestment means a transfer of a resource by a client or his spouse that are all of the following:

- Is within a specified time; see LOOK-BACK PERIOD in this item.
- Is a transfer for LESS THAN FAIR MARKET VALUE;
- Is not listed below under TRANSFERS THAT ARE NOT DIVESTMENT

During the penalty period, Medicaid will not pay the client's cost for:

- LTC services.
- Home and community-based services.
- Home Help.
- Home Health.

Medicaid will pay for other MA-covered services. BEM 405, p 1, 4/1/2011.

Resource means all the client's and his spouse's assets and income. It includes all assets and all income, even countable and/or excluded assets, the individual or spouse receive. BEM 405, p 1, 4/1/2011.

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). BEM 405, p 2, 4/1/2011.

Treat transfers by any of the following as transfers by the client or spouse.

- Parent for minor.
- Legal guardian.
- Conservator.

- Court or administrative body.
- Anyone acting in place of, on behalf of, at the request of or at the direction of the client or the client's spouse. BEM 405, p 2, 4/1/2011.

A divestment determination is not required unless, sometime during the month being tested, the client was in a penalty situation. To be in a penalty situation, the client must be eligible for MA (other than QDWI) and be one of the following:

- In an LTC facility.
- APPROVED FOR THE WAIVER; see BEM 106.
- Eligible for Home Help.
- Eligible for Home Health.

To qualify for Medicaid, a person cannot own countable assets exceeding the \$2,000.00 asset eligibility limit. BEM 400.

Converting an asset from one form to another of equal value is not divestment even if the new asset is exempt. Most purchases are conversions.

The Department contends that Claimant's son purchased items of personal property with Claimant's funds, which were divestments when purchased because they were never used by Claimant or intended to be used by Claimant. The Department maintains that Claimant's son purchased the items in an attempt to avoid using that money to pay for Claimant's long term care.

Claimant argues the two beds, sofa sleeper, bathroom towels, wash cloths, rug, dishes and cooking utensils purchased after Claimant's admission to long-term care are all household goods and are therefore exempt.

According to CFR 416.1216(a) Household goods:

(1) We do not count household goods as a resource to an individual (and spouse, if any) if they are:

(i) Items of personal property, found in or near the home, that are used on a regular basis; or

(ii) Items needed by the householder for maintenance, use and occupancy of the premises as a home.

(2) Such items include but are not limited to: Furniture, appliances, electronic equipment such as personal computers and television sets, carpets, cooking and eating utensils, and dishes.

Looking at the itemized list of purchases, the UPS charge of \$ [REDACTED] alleged to be for postage is not a household good or personal property and is not exempt.

The remaining items, the two beds, sofa sleeper, bathroom towels, washcloths, rug, dishes and cooking utensils purchased are by definition, household goods. However, Claimant has been in a long term care facility since November 20, 2014. Claimant is 79 years old and diagnosed with a stroke and hemiplegia affecting the non-dominant side. No evidence was presented that Claimant would ever return home and in fact, the admission notice indicated his stay would be long term. Therefore, there is no proof that these remaining items are "needed by the householder for maintenance, use and occupancy of the premises as a home," because Claimant is residing in a nursing home for the foreseeable future and has no use of two new beds, a sofa sleeper, bathroom towels, wash cloths, bathroom rug, new dishes and cooking utensils.

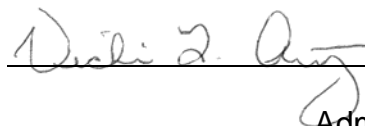
For all the foregoing reasons, the transactions in question are found to be divestment as it was to divert assets to the Claimant's son and make Claimant eligible for MA purposes.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department properly determined Claimant had divested himself of assets and imposed a penalty period.

Accordingly, the Department's determination is **UPHELD**.

It is **SO ORDERED**.



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

Date Signed: **6/9/2015**

Date Mailed: **6/9/2015**

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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:

