

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-004747
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: May 21, 2015
County: Allegan

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, a telephone hearing was held on May 21, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Claimant's son and daughter-in-law, [REDACTED]. Participants on behalf of the Department of Health and Human Services (Department) included Assistance Payment Supervisor [REDACTED] and Long-term Care Specialist [REDACTED].

ISSUE

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 applied for Medicaid on November 20, 2014.
2. On December 3, 2014, a Verification Checklist was mailed to Claimant requesting proof of surrender of annuity, deposit and where funds were spent. Proof of where [REDACTED] accounts were deposited and spent. Copies of complete bank statements beginning at time of surrender of annuity to present. Copy of nursing home statement showing all charges and payments made to the facility since January 1, 2014. Proofs were due by December 15, 2014. (Dept. Ex A, pp 6-7).
3. On December 16, 2014, a second Verification Checklist was mailed to Claimant requesting copies of all [REDACTED] account statements beginning January 1, 2014, to present or closure, including the mutual

fund account, the IRA account and the annuity account. The statements were to include the transaction history for all three account types, balances, and withdrawals. Claimant was instructed to provide proof of all withdrawals and where these funds had been spent/deposited. Verifications were due on December 26, 2014. (Dept. Ex A, pp 8-9).

3. On January 6, 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 if proof of the checks/expenses were provided, the penalty/divestment period may be able to be decreased or eliminated if submitted within 10 days. A list of check numbers was included.
4. On February 4, 2015, an Amended Divestment Penalty was placed in the amount of \$ [REDACTED] for 2 months and 11 days.
5. On February 9, 2015, Claimant submitted the proofs requested on January 6, 2015.
6. Claimant submitted a request for hearing on March 20, 2015.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by 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 (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. BEM 105. Medicaid is also known as Medical Assistance ("MA"). *Id.* The Medicaid program is comprised of several categories; one category is for FIP recipients while another is for Supplemental Security Income ("SSI") recipients. *Id.* Programs for individuals not receiving FIP or SSI are based on eligibility factors in either the FIP or SSI program thus are categorized as either FIP-related or SSI-related. *Id.* To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formally blind or disabled. *Id.* FIP- and SSI-related Group 2 eligibility is possible even when net income exceeds the income limit because incurred medical expenses are considered. *Id.* Eligibility is determined on a calendar month basis. PEM 105 MA income eligibility exists for the calendar month tested when there is no excess income or allowable medical expenses that equal or exceed the excess income. BEM 545.

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. When a person gives up the right to receive income, the FMV is the total amount of income the person could have expected to receive. *Id.*

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, the Department found Claimant to have divested of assets. The Department determined that Claimant was approved for Medicaid effective November 1, 2014, but that the divestment penalty would sanction the client from November 1, 2014, through January 11, 2015.

Claimant’s representative disputes the Department’s determination of divestment, arguing that if the Department had been clear from the beginning as to what was needed, and the importance of the timelines, he would have been more diligent in obtaining the requested information.

Based on the information available to the Department, the Administrative Law Judge finds the Department properly determined and applied the divestment in this case because the requested verifications were not received timely.

Claimant’s representative also disagrees with the penalty period that was already served by Claimant prior to the verifications being submitted to the Department. Department policy indicates that the Department will cancel a divestment penalty if the transferred resources are returned and retained by the individual before the penalty is in effect. BEM 405, p 16 (1/1/2015). The Department will recalculate the penalty period if the transferred resource is returned while the penalty is in effect. BEM 405. *However, once a divestment penalty is in effect, return of, or payment for, resources cannot eliminate any portion of the penalty period already past. The penalty period ends on the later of the end date of the new penalty period or the date the client notified the department that the resources were returned.* BEM 405 (emphasis added).

In this case, the divestment penalty took effect on November 1, 2014. The Department was not given a list to determine the validity of expenditures until February 9, 2015. The divestment penalty ended on January 11, 2015. According to department policy, *once a*

divestment penalty is in effect, return of, or payment for, resources cannot eliminate any portion of the penalty period already past. Here, although Claimant's representative was able to show valid expenditures, it was almost a month after the penalty period had ended, at which point there was no available avenue to eliminate any portion of the penalty period or divestment penalty.

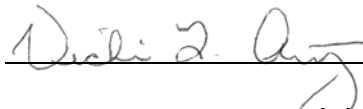
Claimant's grievance centers on dissatisfaction with the Department's current policy. The policy in use by the Department concerns the sending out of Verification Checklists in divestment cases and requesting proof of surrender of annuity, deposit and where funds were deposited and spent. Claimant's request that the Department should have provided Claimant with a detailed list as to how he was to show the transfers were used and that he had to show it for each individual transfer, is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the Department policy set out in the program manuals. Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940). As such, the divestment and divestment penalty must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department properly determined the 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: **6/8/2015**

Date Mailed: **6/8/2015**

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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:

