

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

IN THE MATTER OF:

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Reg. No.: 15-005896
Issue No.: 2008
Case No.: ██████████
Hearing Date: June 03, 2015
County: Wayne-District 82

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 June 3, 2015, from Detroit, Michigan. Participants on behalf of Claimant included ██████████ ██████████, Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Assistance Payment Supervisor, and ██████████, Eligibility Specialist.

ISSUE

Did the Department properly conclude that the closure of a bank account jointly owned by Claimant and his sister was a divestment of assets and apply a divestment penalty to Claimant's receipt of long-term care (LTC) benefits under the Medical Assistance (MA) program?

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 is over age ██████, incapacitated, and a resident in a long-term care facility.
2. The AHR is Claimant's conservator.
3. On January 14, 2015, the AHR withdrew ██████████ from his personal account and deposited the funds into Claimant's account (Exhibit E). The funds were used to pay for Claimant's care.

4. On February 26, 2015, an application for LTC MA benefits for Claimant was submitted to the Department (Exhibit A). In his application, Claimant disclosed that within the sixty months prior to application he had “sold or given away property, land, vehicles, stocks, bonds, savings, cash, checking, income, etc., closed any account or removed or added a name on any asset.”
5. The application included a letter dated January 16, 2015, from [REDACTED] addressed to Claimant and his sister DM indicating that account ending 2605 with an ending account balance of [REDACTED] was closed on April 15, 2014 (Exhibit B).
6. On March 18, 2015, the Department sent the AHR a Verification Checklist (VCL) requesting verification of assets by March 30, 2015, and specifically requesting information concerning the use of [REDACTED] from [REDACTED] account ending -2604 closed on April 15, 2014 (Exhibit F).
7. On March 30, 2015, the AHR submitted a memo to the Department stating that Bank of America account ending 2604 was closed by DM, the joint owner of the account with Claimant, on April 15, 2014, and DM put the [REDACTED] into her personal account. The note further provided that DM maintained that the account was actually hers. The AHR explained that he deposited [REDACTED], an amount equal to one-half of the [REDACTED] in the [REDACTED] account, from his personal account to Claimant’s account in repayment of DM’s generosity toward his family through the years. (Exhibit G.)
8. On April 9, 2015, the Department sent Claimant a Health Care Coverage Determination Notice informing Claimant that he was eligible for LTC benefits, subject to a monthly \$1604 monthly patient pay but that a divestment penalty applied from February 1, 2015, to June 19, 2015, due to Claimant’s transfer of [REDACTED] to DM on April 15, 2014 (Exhibit H).
9. On April 16, 2015, the AHR filed a request for hearing disputing the divestment penalty.

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.

A divestment is the transfer of a resource by a client that is (i) within a specified time (the “look-back period”), (ii) for less than fair market value, and (iii) is not an excluded transfer. BEM 405 (October 2013), p. 1. If an applicant for LTC MA benefits has divested assets, the client may be eligible for MA but a divestment penalty will apply to the client’s case during which time MA will not pay the client’s cost for LTC services but will pay for other MA-covered services. BEM 405, p. 1.

In the April 9, 2015, Health Care Coverage Determination Notice, the Department concluded that Claimant was eligible for MA but precluded from LTC benefits from February 1, 2015, to June 19, 2015, because he transferred assets or income for less than fair market value. In April 2014, Claimant’s sister DM closed the [REDACTED] account ending 2604 that she jointly owned with Claimant and retained the entire [REDACTED] balance. The Department contends that the closure of the account owned by Claimant within five years of his February 2015 MA application was a divestment of assets and calculated the divestment penalty based on a transfer by Claimant of the full [REDACTED]

Cash in savings and checking accounts are assets. BEM 400 (February 2014), pp. 13-14. The value of cash is the amount of money in the account. BEM 400, p. 15. When a client jointly owns a resource with another person, any action by the client or by another owner that reduces or eliminates the client’s ownership or control is considered a transfer by the client. BEM 405, p. 3. However, no penalty is imposed if the parties involved verify that the resource transferred actually belonged solely to the person to whom it was transferred. BEM 405, p. 4.

In this case, on March 30, 2015, in response to the March 18, 2015, VCL requesting information concerning the [REDACTED] account ending 2604, the AHR submitted a memo to the Department stating that the account was closed by DM, the joint owner of the account with Claimant, on April 15, 2014, and DM put the [REDACTED] into her personal account. The note further provided that DM maintained that the account was actually hers. (Exhibit G.) At the hearing, the AHR explained that DM had informed him that she put Claimant as a joint owner of the account at the time of her husband’s death 27 years earlier for convenience purposes.

In light of the evidence calling into question Claimant’s ownership over the [REDACTED] account, the Department did not act in accordance with Department policy when it concluded that the full value of the cash in the account was available to Claimant rather than seeking to verify the share, if any, that he owned. As such, the Department did not act in accordance with Department policy when it calculated a divestment penalty based on the full [REDACTED] value of the account.

Furthermore, at the hearing, the AHR explained that, in an attempt to compensate Claimant for one-half of the funds DM withdraw from the [REDACTED] account, in January 2014, he withdraw [REDACTED] from his own account and deposited those funds in Claimant's account, using the funds to pay for Claimant's care. He presented bank deposit and withdrawal slips to support his testimony (Exhibit E). A divestment penalty is cancelled only if, **before** the penalty is in effect, (i) all the transferred resources are returned and retained by the individual or (ii) if a fair market value is paid for the transferred resource. Through his actions, the AHR paid a fair-market value back to Claimant for one-half of the bank account value. Therefore, to the extent the Department concludes that Claimant owned one-half or less of the [REDACTED] account at issue, the divestment penalty was cancelled by the AHR's actions.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it concluded, without further verification, that there was a divestment of the full amount of the Bank of America account and applied a divestment penalty to Claimant's MA case.

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. Reprocess Claimant's February 27, 2015, application;
2. Provide Claimant with MA benefits he is eligible to receive from February 1, 2015, ongoing; and
3. Notify Claimant and his authorized representative of its decision.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **7/01/2015**

Date Mailed: **7/01/2015**

ACE / tlf

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

