

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-007026
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: July 1, 2015
County: Gladwin

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 July 1, 2015, from Lansing, Michigan. Claimant, represented by Attorney [REDACTED] personally appeared and testified. Participants on behalf of the Department of Health and Human Services (Department) included Assistant Attorney General [REDACTED], Family Independence Manager [REDACTED], and Eligibility Specialist [REDACTED].

ISSUE

Did the Department properly determine Claimant had divested herself 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 May 24, 2011.
2. On July 28, 2011, the Department mailed Claimant an Initial Asset Assessment Notice explaining Claimant's spouse may keep \$ [REDACTED] in assets. Claimant may keep \$ [REDACTED] in assets. The Notice explained that the amount protected for Claimant's spouse was one-half of the Initial Asset Amount of \$ [REDACTED] but not less than \$ [REDACTED] or more than \$ [REDACTED] (Dept. Ex A, pp 9-11).
3. On July 28, 2011, a Notice of Case Action was mailed to Claimant indicating Claimant was approved for Medicaid from May 1, 2011,

ongoing. She was also approved for the Medicare Savings Program beginning July 1, 2011, ongoing. (Dept. Ex 12-16).

3. During the Redetermination in June, 2014, the Department discovered Claimant owned a [REDACTED] from which she withdrew funds in 2013. Claimant had owned the IRA since March, 2011. As of March 31, 2011, the value of the IRA was \$ [REDACTED]. This IRA had not been previously reported. (Hearing Summary, Claimant's Exhibit p 3).
4. On October 3, 2014, the Department sent Claimant a Health Care Coverage Determination Notice indicating Claimant's MA benefits were closed effective August 1, 2014, due to excess assets. (Dept. Ex A, p 2).
5. On December 1, 2014, the Department mailed Claimant a Health Care Coverage Determination Notice indicating an Initial Asset Assessment was completed on July 28, 2011. At that time the protected community spousal amount had been determined. The [REDACTED] IRA account had not been reported at the time of the Initial Asset Assessment resulting in that asset or a portion of that asset as being protected. It is a countable asset for the group and based on the statement from the bank of [REDACTED] [REDACTED] account balance, they are over the \$2,000 asset limit for Medicaid. (Dept. Ex A, p 6).
6. On April 15, 2015, the Department mailed Claimant a Health Care Coverage Determination Notice indicating Claimant is eligible for Medicaid beginning January 1, 2015 ongoing, but she is not eligible for long term care or waiver services from January 1, 2015 through February 19, 2016, due to a divestment penalty. (Dept. Ex pp 76-79).
7. Claimant reapplied for MA on January 22, 2015.
8. The Department received a court order on January 22, 2015, ordering transfer of Claimant's assets to her husband. The Department determined that the value of the [REDACTED] IRA that was withdrawn by Claimant's husband is considered divestment due to the funds not being included in the Initial Asset Assessment and the transfer occurring after the Presumed Asset Eligibility Period of August 1, 2011, through July 31, 2012. (Hearing Summary).
9. The divestment penalty was calculated using total funds withdrawn from the [REDACTED] IRA minus the funds that were reported as being deducted for federal and state tax obligations, legal fees and home repairs. Total divestment equals \$ [REDACTED] - \$ [REDACTED] (fed taxes) - \$ [REDACTED] (state taxes) - \$ [REDACTED] (legal fees) - \$ [REDACTED] (home repairs) = \$ [REDACTED]. Divestment penalty calculation: \$ [REDACTED] divided by

\$ [REDACTED] = [REDACTED] Divestment penalty period calculated from January 1, 2015, through February 19, 2016. (Hearing Summary).

10. Claimant submitted a request for hearing on April 23, 2015.

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 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.*

Claimant applied for Medicaid on May 24, 2011. Claimant was approved for Medicaid from May 1, 2011, ongoing. She was also approved for the Medicare Savings Program beginning July 1, 2011, ongoing. The Department performed yearly redeterminations per policy. In 2014, the Department received information for the first time that Claimant had a [REDACTED] IRA that had not been previously reported. The Department discovered Claimant had owned the IRA since 2011 but had failed to report the asset to the Department during the initial asset assessment period. The Department found Claimant had been making withdraws from the IRA since 2013.

In this case, the Department found Claimant to have divested assets in the amount of \$[REDACTED] from the originally unreported [REDACTED] IRA. Once the [REDACTED] IRA was discovered, Claimant's Medicaid was closed due to excess assets. Claimant reapplied for MA and the Department determined that Claimant was approved for Medicaid effective January 1, 2015, but that the divestment penalty would sanction the client from January 1, 2015, through February 19, 2016.

Claimant's representative disputes the Department's determination of divestment, arguing that 42 USC § 1396p clearly defines that transfers to the individuals spouse for their benefit do not make the applicant ineligible for medical assistance. Moreover, Claimant's representative contends that 42 USC § 1396r-5 permits transfers of resources to the community spouse, where as in this case, a court has entered an order against an institutionalized spouse for the support of the community spouse and such transfers are not subject to the divestment penalty in 42 USC § 1396p.

However, as the Assistant Attorney General correctly points out, there are special asset rules for spouses clearly delineated in 42 USC § 1396r-5. Moreover, 42 USC § 1396r-5 takes precedence over any other provision of Medicaid law. 42 USC § 1396r-5(a)(1).

BEM 402 has incorporated these rules into policy. BEM 402 explains how the initial asset assessment is calculated. Once the 12-month period expires, BEM 402 is clear, in that BEM 400 is then used to determine continuing asset eligibility. The community spouse is **not** an asset group member and the community spouse's resources are no longer considered in the eligibility calculation. The protected spousal amount is **not** used. Therefore, the client's own countable assets must **not** exceed the appropriate asset limit (currently \$2,000 for AD-Care or Extended Care categories). BEM 402, pp 6-7 (7/1/2015).

Since the community spouse's assets are no longer used to calculate eligibility once the 12-month period expires, 42 USC § 1396r-5(f)(1) directs the Department to treat all transfers to the community spouse as divestment. See *Morris v Oklahoma Department of Human Services*, 685 F3d 925, 935 (CA10, 2012); cited with approval in *Hughes v McCarthy*, 734 F3d 473, 480 (CA6, 2013). Allowing a limitless transfer between spouses after the initial asset assessment of MA-LTC, would render the provisions of the community spouse resource allowance contained in section 1396r-5 meaningless. *Feldman v Department of Children and Families*, 919 So 2d 512, 516 (Fla Dist Ct App, 2005).

Therefore, this Administrative Law Judge finds the Department properly determined that Claimant's transfer of the \$ [REDACTED] to her spouse qualified as a divestment and the Department properly calculated the divestment penalty of January 1, 2015, through February 19, 2016.

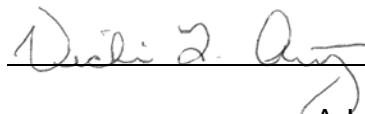
Furthermore, Claimant's representative's argument that the court order from January 13, 2015, controls this issue is without merit. At the time of the court ruling, there were no assets to protect. Claimant had already transferred the funds in the [REDACTED] IRA to her spouse in September, 2014, four months prior to the court's order.

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 herself 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: **7/22/2015**

Date Mailed: **7/22/2015**

VLA/las

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:

