

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-013948
Issue No.: 2008
Agency Case No.: [REDACTED]
Hearing Date: December 07, 2015
County: Macomb-District 12
(Mt Clemens)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION

Following Petitioner'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 December 7, 2015, from Mt. Clemens, Michigan. [REDACTED] represented Petitioner. Petitioner appeared and testified. Petitioner's daughter, [REDACTED], was present at the hearing but did not participate. The Department of Health and Human Services (Department) was represented by [REDACTED] Assistant Attorney General. [REDACTED], Eligibility Specialist, appeared as a witness on the Department's behalf.

ISSUE

Did the Department properly conclude that Petitioner divested assets totaling \$88,252 and apply a divestment penalty to Petitioner's receipt of long-term care (LTC) benefits under the Medicaid (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. Petitioner is an ongoing recipient of MA benefits and had been approved for LTC benefits.
2. In connection with an MA redetermination, the Department became aware that on [REDACTED], Petitioner quitclaimed real property in [REDACTED], Michigan to her son and daughter-in-law for no consideration (Exhibits C and F).

3. The value of the property in 2012 was \$88,252.
4. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice notifying her that she was approved for MA for [REDACTED] ongoing but that she was ineligible for LTC benefits from [REDACTED] through [REDACTED] because she had transferred assets for less than their fair market value (Exhibit B).
5. On [REDACTED] Petitioner's attorney filed a timely request for hearing disputing the Department's actions (Exhibit A).

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.

In Michigan, assistance with LTC costs is available under MA SSI-related categories for eligible individuals who have countable resources of \$2,000 or less and have not disposed of any assets for less than fair market value during the five years prior to application. BEM 105 (October 2014), p. 1; BEM 163 (July 2013), pp. 1-2; BEM 164 (October 2014), pp. 1-2; BEM 166 (July 2013), pp. 1-2. If a client is asset-eligible for MA, the Department reviews any transfer of assets made by the individual in the five-year period that the client was eligible for MA and either in LTC, approved for the waiver, eligible for Home Health services, or eligible for home help services. BEM 405 (January 2015), pp. 1-9, 12-16. If the individual has divested assets, she 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 expenses for LTC services but will pay for other MA-covered services. BEM 405, p. 1.

In her request for hearing, Petitioner's counsel challenges the Department's finding that Petitioner's quitclaiming of her home to her son and daughter-in-law constituted a divestment. Counsel did not challenge in either her hearing request or at the hearing the calculation of the divestment penalty based on the Department's determination that

the home's value in 2012 was \$88,252. Accordingly, the issue presented is limited to whether the transfer was a divestment.

A divestment occurs when the client transfers a resource (i) within a specified time (the "look-back period"), (ii) for less than fair market value, and (iii) the transfer is not an excluded transfer. BEM 405, p. 1. The look-back period is a transfer within 60 months of the first date that the client was eligible for MA and one of the following: in LTC, approved for the waiver, eligible for Home Health services, or eligible for home help services. BEM 405, pp. 5-6. "Less than fair market value" means the compensation received in return for a resource was worth less than the fair market value of the resource. BEM 405, p. 7. In other words, the amount received for the resource was less than what would have been received if the resource was offered in the open market and in an arm's length transaction. BEM 405, p. 7. Compensation must have tangible form and intrinsic value. BEM 405, p. 7. Giving an asset away is a transfer that results in a divestment. BEM 405, p. 2.

In this case, Petitioner acknowledged that in 2012 she quitclaimed her home in [REDACTED] Michigan to her son and daughter-in-law and they moved in with her. Petitioner's counsel did not dispute that the transfer was within the look-back period, and Petitioner did not dispute that she did not receive any compensation from her son or daughter-in-law when she quitclaimed the home to them.

At the hearing, Petitioner explained that "she came with the home" and there was an understanding that her son and daughter-in-law would assist her in maintaining the home. Department policy acknowledges that relatives can be paid for providing services. BEM 405, p. 6. However, services are assumed to be provided for free when no payment was made at the time services were provided. BEM 405, p. 6. A client can rebut this presumption by providing tangible evidence that a payment obligation existed at the time services were provided, i.e., a written agreement signed at the time services were first provided. BEM 405, pp. 6-7. In this case, Petitioner did not establish by documentary evidence, or any other tangible evidence, that there was a payment obligation at the time the house was transferred.

Department policy also provides that it is **not** a divestment for a client to transfer her homestead to a child age 21 or over who (1) lived in the homestead for at least two years immediately before the client's admission to LTC and (2) provided care that would otherwise have required LTC, as documented by a physician's statement. BEM 405, pp. 10, 17. In the present case, there was no physician statement that Petitioner required LTC care in the two years immediately before her admission to LTC. There was also no evidence that Petitioner's son lived in the home with Petitioner for at least two years prior to Petitioner's admission to the LTC facility. In the absence of such evidence, Petitioner cannot establish that the transfer of her home to her son and daughter-in-law was an excluded transfer.

Petitioner's counsel argued that, because Petitioner was in need of LTC assistance, the divestment penalty resulted in an undue hardship. A divestment penalty may be waived if it creates undue hardship. BEM 405, p. 16. An undue hardship exists when a client's physician provides a written statement that necessary medical care is not being provided and the client needs treatment for an emergency condition. BEM 405, pp. 16-17. A medical emergency exists when a delay in treatment may result in the person's death or permanent impairment of the person's health. BEM 405, p. 16. The Department is required to assume that there is no undue hardship unless there is evidence to the contrary. BEM 405, p. 16.

In this case, there was no medical evidence supporting Petitioner's claims of undue hardship. Therefore, Petitioner's has failed to establish a right to a waiver of the divestment penalty under Department policy. To the extent counsel makes an equitable appeal for waiver of the penalty on the basis that Petitioner was the victim of fraud by her son, the undersigned lacks the authority to provide such a remedy. See *Delke v Scheuren*, 185 Mich App 326, 332; 460 NW2d 324 (1990) (providing that, in the absence of an express legislative conferral of authority, an administrative agency generally lacks the powers of a court of equity).

Based on the evidence in this case, the Department properly concluded that Petitioner divested an asset when she quitclaimed her home to her son and daughter-in-law. 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 acted in accordance with Department policy when it applied a divestment penalty to Petitioner's receipt of LTC services.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



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

Date Signed: **12/17/2015**

Date Mailed: **12/17/2015**

ACE / ttf

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:



