

**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.: 15-014297  
Issue No.: 2008  
Agency Case No.: [REDACTED]  
Hearing Date: November 10, 2015  
County: Wexford-Missaukee

**ADMINISTRATIVE LAW JUDGE:** C. Adam Purnell

**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 conference hearing was held on November 10, 2015 from Lansing, Michigan. Attorney [REDACTED] ([REDACTED]) appeared via telephone on behalf of Claimant. [REDACTED] (Claimant's daughter) provided testimony as a witness via telephone. Assistant Attorney General (AAG) [REDACTED] ([REDACTED]) represented the Department of Health and Human Services (Department). [REDACTED] (Eligibility Specialist) and [REDACTED] (Hearing Coordinator/Family Independence Manager) testified as witnesses for the Department.

**ISSUE**

Did the Department properly determine that Claimant had divested herself of assets to warrant the imposition of a penalty?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On March 8, 2006, Claimant and [REDACTED] (Claimant's spouse) entered into a "lady bird deed" where they conveyed their homestead property, located at [REDACTED], to [REDACTED] (Claimant's son) and [REDACTED] (Claimant's daughter) as joint tenants with full rights of survivorship. The property was exchanged for \$ [REDACTED] (one dollar) and contained the following provision:

The Grantors, or survivor, further reserve the absolute power to dispose of or mortgage this property by conveyance or mortgage during each life and such power is free simple

estate for these purposes. Upon failure of Grantors, or survivor, to convey or mortgage the premises during their lifetime, then this power to convey or mortgage the fee simple estate terminates upon death of the Grantors. This conveyance is made pursuant to the provisions of MCL 556.1222 and Michigan Land Title Standard 9.3 [See Exhibit 1, p. 37].

2. Claimant's medical condition deteriorated after she fell in January, 2015.
3. On November 7, 2014, Claimant and Claimant's spouse conveyed their property located at [REDACTED], via quit claim deed, to themselves and Claimant's daughter, as joint tenants, for consideration of less than \$ [REDACTED] (one hundred dollars). [Exh. 1, pp.40-41].
4. According to the [REDACTED], Claimant's property had a state equalized value (SEV) of \$ [REDACTED] in 2014 and an SEV of \$ [REDACTED] in 2015. [Exh. 1, p. 34].
5. On June 30, 2015, Claimant's spouse submitted a Medicaid application (DHS-4574) along with an Assets Declaration Patient and Spouse (DHS-4574-B) form. The Medicaid application indicated, among other things, that the date of Claimant's nursing facility admission is December 26, 2014. [Exh. 1, pp. 22-26].
6. On June 30, 2015, Claimant's spouse sent the Department a Retroactive Medicaid Application (DHS-3243) which, among other things, indicated that Claimant had unpaid medical bills for the months of April and May, 2015. [Exh. 1, pp.29-30].
7. On July 23, 2015, the Department mailed Claimant's attorney/authorized representative (AR) a Health Care Coverage Determination Notice (DHS-1606) which indicated the following:
  - a. Claimant divested an asset within the 5 year look-back period.
  - b. Baseline date is April 1, 2015.
  - c. The asset deemed as divestment was the November 7, 2014 homestead property deed where full control of the asset was given up due to the fact that an enhanced life estate was not present on the new deed.
  - d. Medicaid will not pay for LTC costs between April 1, 2015 and July 3, 2016.
  - e. The Department calculated the divestment penalty as follows:
    - i. \$ [REDACTED] (2015 SEV) x 2 = \$ [REDACTED] fair market value of property.

- ii.  $\frac{\$ \text{ [REDACTED] uncompensated value of asset divested}}{\$ \text{ [REDACTED] (the 2015 average monthly private LTC cost in Michigan)}} = 15.11$ . This is converted to 15 months and remaining .11 x 30 days (number of days for penalty period in remaining partial month [3 months, 3 days]).
  - iii. Divestment penalty = 15 months, 3 days or 459 days.
- f. Claimant's annual Income was \$ [REDACTED]
  - g. Claimant's MA application for LTC was approved for full MA coverage effective April 1, 2015 ongoing.
  - h. Claimant is approved for full coverage under the Medicare Savings Program effective July 1, 2015 ongoing.
  - i. Claimant is not eligible for Medicare Savings Program from June 1, 2015 through June 30, 2015 because she has full Medicaid coverage.

[Exh. 1, pp. 45-46].

- 8. On July 23, 2015, the Department mailed Claimant's attorney the following: (1) a blank Intent to Contribute Income (DHS-4592); (2) a Community Spouse and Family Income Allowance Record (DHS-4584) which included the community spouse's monthly budget; and (3) Community Spouse and Family Income Allowance Notice (DHS-4587), which determined the community spouse income allowance is \$ [REDACTED] [Exh. 1, pp. 48-52].
- 9. On July 28, 2015, Claimant's attorney sent an email to [REDACTED] (Eligibility Specialist) indicating that he forgot to include a copy of a "Joint Ownership Agreement" which contained paragraphs (1.2 and 1.3, respectively) that gave Claimant and Claimant's spouse the power to convey the property. Claimant's attorney included the agreement as an attachment to the email. In this email, Claimant's attorney also requested a hearing to dispute the divestment decision. [Exh. 1, pp. 54-61].
- 10. The Eligibility Specialist forwarded the Joint Ownership Agreement to the Department's legal office for evaluation. [Exh. 1, p. 63].
- 11. On July 30, 2015, the Eligibility Specialist sent an email to Claimant's attorney indicating that the Department's legal office, after review, did not change their original decision concerning the divestment. [Exh. 1, p. 63].
- 12. On July 30, 2015, Claimant's attorney responded via email to the Eligibility Specialist indicating that they were in the process of curing the divestment insofar as it is necessary. In addition, Claimant's attorney promised to forward a signed deed removing Claimant's daughter's interest in the property "in the next day or two." This was intended to end the penalty. [Exh. 1, p. 63].

13. On August 3, 2015, the Department mailed Claimant a Benefit Notice (DHS-176) which indicated, "Divestment penalty end date, notified asset returned 8/3/15." The DHS-176 further noted, "On 8/3/15, DHHS was notified by the client attorney that the Homestead Property was conveyed solely to [REDACTED] (community spouse). Due to the divested asset being fully returned to the client's spouse the divestment penalty ran from 4/1/15 to 8/3/15." [Exh. 1, pp. 70-71].
14. On July 28, 2015, the Michigan Administrative Hearing System (MAHS) mailed a Notice of Hearing to all interested parties which scheduled the hearing for September 14, 2015.
15. On August 20, 2015, Assistant Attorney General (AAG) [REDACTED] filed an appearance.
16. On September 10, 2015, the Department, who was represented by counsel, sent a letter to the Administrative Law Judge requesting an adjournment.
17. On September 10, 2015, the Administrative Law Judge issued an Order Denying Request for Adjournment.
18. On September 16, 2015, AAG requested an adjournment on behalf of the Department.
19. On September 16, 2015, the Administrative Law Judge issued an Adjournment Order.
20. On October 20, 2015, the MAHS mailed a second Notice of Hearing to the parties, which scheduled a telephone hearing for November 10, 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, 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.

The Medicaid program was created by Congress with the intent "to provide benefits to the truly needy." *Mackey v Dep't of Human Servs*, 289 Mich App 688, 697; 808 NW2d 484 (2010). "To be eligible for Medicaid long-term-care benefits in Michigan, an individual must meet a number of criteria, including having \$2,000 or less in countable assets." *Mackey* at 698. In some cases, persons with wealth have transferred their assets for less than fair market value in order to become eligible for Medicaid. See *Mackey* at 698-699. The typical purpose of such transfers is to "pass on . . . accumulated wealth" within the family unit. See *Mackey* at 697. To avoid this misuse of the Medicaid system, however, a state examines all transfers of assets within a specified time frame to determine whether the transfers were made "solely to become eligible for Medicaid, which can be established if the transfer was made for less than fair market value." *Mackey* at 696. This time frame is the "look-back period." *Mackey, supra*. "A transfer for less than fair market value during the 'look-back' period is referred to as a 'divestment.'" *Mackey, supra*. A divestment "subjects the applicant to a penalty period during which payment of long-term-care benefits is suspended." *Mackey, supra*.

A "divestment" is a transfer of assets that would create a penalty period. BEM 405 (7-1-2015), p. 1. The "penalty period" is a period of disqualification from Medicaid assistance for Long Term Care (LTC).<sup>1</sup> BEM 405, p. 1. In other words, the penalty period is the number of months of long term care that will not be covered by Medicaid. Divestment is a type of transfer of a resource and not an amount of resources transferred. BEM 405, p. 1. Divestment results in a penalty period in Medicaid, not ineligibility. BEM 405, p.1. The divestment policy does not apply to "Qualified Working Individuals."<sup>2</sup> BEM 405, p 1.

Divestment means a transfer of a "resource" by a client or his spouse that are all of the following: (1) is within a specified time (look-back period); (2) is a transfer for less than fair market value; (3) is not considered by policy as a "transfer that is not divestment." BEM 405, p. 1. "Resource" is defined as all of the client's and his/her spouse's assets and income. BEM 405, pp. 1-2. It includes all assets and all income, even countable and/or excluded assets, the individual or spouse receive. BEM 405, pp. 1-2. It also includes all assets and income that the individual (or their spouse) were entitled to but did **not** receive because of action by one of the following: (1) the client or spouse; (2) a person (including a court or administrative body) with legal authority to act in place of or on behalf of the client or the client's spouse; (3) any person (including a court or administrative body) acting at the direction or upon the request of the client or his spouse. BEM 405, p. 2.

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<sup>1</sup> LTC means being in any of the following: (1) a nursing home that provides nursing care; (2) a county medical care facility that provides nursing care; (3) a hospital long-term care unit; (4) a MDHHS facility that provides active psychiatric treatment; (5) a special MR nursing home; or (6) a MDHHS facility for individuals with intellectual disability that provides ICF/ID (Intermediate Care Facility for Individuals with Intellectual Disability) nursing care. A person may receive hospice care in one of these facilities. He [or she] is still considered in LTC. Bridges Program Glossary (BPG), pages 33, 39.

<sup>2</sup> See BEM 169.

During the penalty period, Medicaid will not pay the client's cost for: (1) LTC services; (2) home and community-based services; (3) home help; and (4) home health. BEM 405, p. 1. However, Medicaid will pay for other MA-covered services. BEM 405, p. 1.

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. BEM 405, p. 2. Not all transfers are divestment. BEM 405, p. 2. Examples of transfers include: (1) selling an asset for fair market value (not divestment); (2) giving an asset away (divestment); (3) refusing an inheritance (divestment); (4) payments from a Medicaid Trust that are not to, or for the benefit of, the person or his spouse; see BEM 401 (divestment); (5) putting assets or income in a trust<sup>3</sup>; (6) giving up the right to receive income such as having pension payments made to someone else (divestment); (7) giving away a lump sum or accumulated benefit (divestment); (8) buying an annuity that is not actuarially sound (divestment); (9) giving away a vehicle (divestment); and (10) putting assets or income into a Limited Liability Company (LLC). BEM 405, p. 2.

According to BEM 405, p. 3, transfers by any of the following individuals are considered transfers by the client or spouse: (1) parent for minor; (2) legal guardian; (3) conservator; (4) court or administrative body; (5) anyone acting in place of, on behalf of, at the request of or at the direction of the client or the client's spouse.

When a client jointly owns a resource with another person(s), 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. BEM 405, pp. 3-4 provides examples.

The first step in determining the period of time that transfers can be looked at for divestment is determining the baseline date. BEM 405, p. 5. A person's baseline date is the first date that the client was eligible for Medicaid and one of the following: (1) in LTC; (2) approved for the waiver under BEM 106; (3) eligible for Home Health services; or (4) eligible for Home Help services. BEM 405, p. 5.

A client's baseline date does not change even if one of the following happens: (1) the client leaves LTC; (2) the client is no longer "approved for the waiver" under BEM 106; (3) the client no longer needs Home Help; or (4) the client no longer needs Home Health. BEM 405, p. 6. Once the baseline date is established, the Department determines the look-back period. BEM 405, p. 5. The look back period is 60 months prior to the baseline date for all transfers made after February 8, 2006. BEM 405, p. 5.

Transfers that occur on or after a client's baseline date must be considered for divestment. BEM 405, p. 5. In addition, transfers that occurred within the 60 month look-back period must be considered for divestment. BEM 405, p. 5. A divestment determination is not required unless, sometime during the month being tested, the client was in a penalty situation. BEM 405, p. 5. To be in a penalty situation, the client must be eligible for MA (other than QDWI) and be one of the following: (1) in an LTC facility; (2)

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<sup>3</sup> See BEM 401.

“approved for the waiver” under BEM 106; (3) eligible for Home Help; (4) eligible for Home Health. BEM 405, p. 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. 6. That is, 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 (see glossary). BEM 405, p. 6.

Policy also covers Home Caretaker & Personal Care Contracts. BEM 405, p. 7. A contract/agreement that pays prospectively for expenses such as repairs, maintenance, property taxes, homeowner’s insurance, heat and utilities for real property/homestead or that provides for monitoring health care, securing hospitalization, medical treatment, visitation, entertainment, travel and/or transportation, financial management or shopping, etc. would be considered a divestment. The Department will consider all payments for care and services which the client made during the look back period as divestment. BEM 405, p. 7.

Transfer of the following may be divestment: (1) homestead of L/H and waiver client (see BEM 106) or the L/H and waiver client’s spouse even if the transfer occurred before the client was institutionalized or approved for the waiver; or (2) assets that were not countable because they were unavailable or not salable. BEM 405, p. 9.

It is **not** divestment to transfer a homestead to the client’s: (1) spouse (see Transfers Involving Spouse above); (2) blind or disabled child (see Transfers Involving Child above); (3) child under age 21; (4) child age 21 or over who: (a) lived in the homestead for at least two years immediately before the client’s admission to LTC or BEM 106 waiver approval; **and** (b) provided care that would otherwise have required LTC or BEM 106 waiver services, as documented by a physician’s (M.D. or D.O.) statement; (5) brother or sister who: (a) Is part owner of the homestead, **and** (2) lived in the homestead for at least one year immediately before the client’s admission to LTC or BEM 106 waiver approval. BEM 405, pp. 10-11.

Transfers exclusively for a purpose other than to qualify or remain eligible for MA are not divestment. BEM 405, p. 11. The Department will assume transfers for less than fair market value were for eligibility purposes until the client or spouse provides **convincing evidence** that they had no reason to believe LTC or waiver services might be needed. BEM 405, p. 11. [Emphasis added]. Example: Mr. Smith, age 40, was in good health when he gave his vacation cottage to his nephew. The next day Mr. Smith was in an automobile accident. His injuries require long-term care. The transfer was not divestment because Mr. Smith could not anticipate his need for LTC services. However, there is an exception. Preservation of an estate for heirs or to avoid probate court is not acceptable as another purpose. BEM 405, p. 11 [Emphasis added].

A client can be penalized if he or his spouse divests. BEM 405, p. 15. The penalty is imposed on whichever spouse is in a Penalty Situation; see BEM 211, MA Group Composition. BEM 405, p. 15. If both spouses are in a penalty situation, the penalty period (or any remaining part) must be divided between them. BEM 405, p. 15.

The Department will cancel a divestment penalty if either of the following occurs before the penalty is in effect: all the transferred resources are returned and retained by the individual or fair market value is paid for the resources. BEM 405, p. 16. The Department will then recalculate the penalty period if either of the following occurs while the penalty is in effect: all the transferred resources are returned and (2) full compensation is paid for the resources. BEM 405, p. 16.

The Department uses the same per diem rate originally used to calculate the penalty period. BEM 405, p. 16. Once a divestment penalty is in effect, return of, or payment for, resources cannot eliminate any portion of the penalty period already past. However, the Department should recalculate the penalty period. BEM 405, p. 16. The divestment penalty ends on the later of the following: (1) the end date of the new penalty period; or (2) the date the client notified the Department that the resources were returned or paid for. BEM 405, p. 16.

In the instant matter, the Department contends that when Claimant and her spouse conveyed the homestead property in November, 2014, they executed the 2006 lady bird deed option and gave away a controlling interest in the property by adding their daughter as joint tenants. The Department further argues that Claimant's joint agreement may not act to alter the terms contained in the November, 2014 quit claim deed. The Department believed that this transfer of property was a divestment and the Department's subsequent divestment calculation amount and corresponding penalty period was proper.

Claimant, on the other hand, contends that this is not a divestment or that it falls within the other purpose exception under BEM 405, page 1. Claimant argues that prior to the November, 2014 transaction; she and her spouse owned only a "fractional joint tenancy interest" of their homestead property with the right to convey under the 2006 "lady bird" agreement provision. Under the 2006 lady bird deed, Claimant argue that Claimant, her spouse, son and daughter each had a 1/4 interest in the property. After the November, 2014 transfer of property, Claimant argues that she and her spouse held a larger "fractional interest" (1/3 interest) in the property with the same unfettered right to convey. In this regard, Claimant asserts that the November, 2014 transfer was merely illusory. Claimant further argues that the joint ownership agreement is a permissible tool to modify their rights. According to Claimant, Claimant's daughter never had a real interest in the property because her parents always possessed the right to convey. Therefore, Claimant argues that because the property interest conveyed to their daughter did not exist, it could not be considered a transfer for less than fair market value. This meets the exclusion under BEM 405, page 11, which excludes transfers for another purpose other than to qualify for LTC Medicaid. Overall, Claimant argues that Claimant's (and her spouse's) reserved power to convey the real estate was properly

moved into a joint ownership agreement in order to take advantage of the “uncapping rules” and that the agreement gives them the same substantive rights that they held under the reserved power in the 2006 deed.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Claimant has not challenged the Department's divestment calculations. However, the salient issue is whether there is convincing evidence that the November, 2014 transfer of property was made exclusively for a purpose other than to remain eligible for Medicaid and that Claimant and her spouse had no reason to believe LTC services might be needed as defined by BEM 405, p. 11. In support of this position, Claimant submits an Affidavit signed by Claimant's spouse. A review of this affidavit shows that Claimant's attorneys authored this document and was later signed by Claimant's spouse one day before the hearing in this matter. In addition, the affidavit concludes, “[W]e signed the March 8, 2006 [sic] solely for the purpose of probate avoidance.” [Aff of ██████ ¶ 4, Exh. 2]. The affidavit also provides that the November 2014 deed along with the joint ownership were done with the intent to prevent the “uncapping rules.” [Aff of ██████ ¶ 9, Exh. 2]. Moreover, Claimant's spouse reportedly indicated that at the time of the November deed and the joint agreement: (1) both he and his spouse were in good health; (2) had not reason to believe Medicaid LTC or waiver services were needed; and (3) shortly after signing the deed and joint ownership agreement, Claimant suffered several unexpected, severe health problems. [Aff of ██████ ¶¶ 10-13, Exh. 2]. The undersigned does not find the affidavit to be convincing as it was clearly not the product of the mental impressions of Claimant's spouse. Such an affidavit which conveys Claimant's alleged subjective intent is unpersuasive and not controlling in this inquiry.

Claimant's daughter testified at the hearing via telephone in this matter that her mother did not have any issues that required LTC prior to November, 2014. She stated that she was involved in her parent's life and there was no plan to place her mother in a LTC facility at that time. Claimant's daughter recalled that she had been on her parent's deed since 2006. She stated that there was another transaction because her youngest brother (█████) later wanted to be removed from the deed. She recalled that her father had a heart attack in November, 2014 prior to the Thanksgiving holiday. Claimant's daughter testified that she thought the reason why the November, 2014 deed was signed was to avoid the uncapping rules. She also stated that the property had been in the family for over 100 years and they wanted to keep it in the family. She also

remembered signing the joint ownership in November, 2014 and that she signed another deed that conveyed the property back to her parents in the summer of 2015. She believed that her father is the sole owner of the property at this time.

The Administrative Law Judge reviewed the entire record in this matter and has reached the following conclusions. First, when Claimant and her spouse, on November 7, 2014, conveyed their property, via a quit claim deed, to themselves and Claimant's daughter, this was a transfer of assets. They intended to transfer ownership of the property to their daughter. [Exh. 1, pp.40-41]. The record shows that Claimant had divested herself of assets when this transfer occurred.

Under BEM 405, page 11, a transfer exclusively for a purpose other than to qualify or remain eligible for MA is not a divestment. Here, Claimant's daughter received a share of the interest in the property when it was conveyed through a quit claim deed on November, 2014. The undersigned has not been provided with any authority to suggest that a separate contract (joint agreement) may serve to modify or change the terms of the deed. The quit claim deed in this matter did not reference any additional documents or separate contracts. The Administrative Law Judge finds that the Department is not compelled to consider the joint agreement to alter or modify the rights of Claimant's daughter to whom the property was conveyed. Claimant also did not supply this Administrative Law Judge with any authority to show that can transfer the property and, through a separate agreement, relinquish that property of its value.

The Department's calculation of the subject property's fair market value is \$ [REDACTED] is proper. [Exh. 1, pp. 45-46]. The transfer of this property for less than \$ [REDACTED] was less than the property's fair market value. Even including the joint agreement, the evidence does not show that the fair market value of this property would be substantially lower as than \$ [REDACTED] based on the SEV. The undersigned is not convinced that the transfer was for purposes other than to qualify for Medicaid LTC benefits. The Department, pursuant to BEM 405, page 11, properly assumed this transfer was for less than fair market value and was for Medicaid eligibility purposes. Claimant, at the time, did not provide the Department with convincing evidence that they had no reason to believe LTC or waiver services might be needed. BEM 405, p. 11. However, even if both Claimant and her spouse were in good health in November, 2014 and did not anticipate the need for LTC services at the time, the exception under BEM 405, page 11 applies. Claimant's daughter testified credibly that the property in question was in the family for over 100 years and they wanted to make sure that the estate was preserved. BEM 405, page 11 specifically indicates that preservation of an estate for heirs or to avoid probate court is not acceptable as another purpose.

This Administrative Law Judge finds that the November 7, 2014 transfer of property was a transfer of a resource that occurred within look-back period and was for less than fair market value. The transfer also did not fit within a transfer that is considered an exception to divestment under BEM 405. The Department also did not err because it properly determined that the transfer was a divestment and the calculation of the divestment amount and the corresponding penalty were also correct. The Department

has established this case by the necessary competent, substantial and material evidence on the whole record.

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.

**DECISION AND ORDER**

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

IT IS SO ORDERED.



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**C. Adam Purnell**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health & Human Services

Date Mailed: 12/1/2015

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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:

