



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 4, 2016
MAHS Docket No.: 15-021102

[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 February 23, 2016, from Traverse City, Michigan. The Petitioner was represented by her Authorized Hearing Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by Family Independence Manager [REDACTED] and Eligibility Specialist [REDACTED].

ISSUE

Whether the Department properly imposed a divestment penalty from December 1, 2015 through December 2, 2015?

FINDINGS OF FACT

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

1. At all times pertinent to this hearing, Petitioner was a Medicaid (MA) recipient and resided in a long-term care facility. (Hearing Summary).
2. On September 29, 2015, Petitioner's AHR submitted a Redetermination to the Department for the October 2015 review. (Dept. Exh. A, 18D).
3. During the look-back period, Petitioner received payment for selling her life insurance policy. (Dept. Exh. A, 17).

4. Petitioner's [REDACTED] life insurance policy was purchased by Petitioner's son on July 29, 2015. (Dept. Exh. A, 11).
5. The cash surrender value of the insurance policy was [REDACTED] (Dept. Exh. p 4).
6. The Department considered this transfer a divestment resulting in the imposition of a divestment penalty period based on a divestment of [REDACTED] (Dept. Exh. pp 1-2).
7. Long-term care was not paid from December 1, 2015 through December 2, 2015 during the 2-day divestment penalty period. (Dept. Exh. pp 1-2).
8. On October 20, 2015, the Department sent Petitioner's Authorized Hearing Representative a Health Care Coverage Determination Notice which included notification of the divestment penalty. (Dept. Exh. pp 1-2).
9. On October 30, 2015, the Department received the Authorized Hearing Representative's timely written request for hearing.

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 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 and 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. BEM 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.*

Transfers for less than fair market value are presumed to be for eligibility purposes unless/until the client provides convincing evidence that they had no reason to believe long-term care (or waiver services) might be needed. *Id.* Converting an asset from one form to another of equal value is not divestment even if the new asset is exempt. *Id.* Payment of expenses such as one’s own taxes or utility bills is not divestment. *Id.*

The Department found the Petitioner to have divested of assets when the Petitioner’s guardian sold Petitioner’s life insurance policy to Petitioner’s son. The Department determined that the divestment penalty would sanction Petitioner from December 1, 2015 through December 2, 2015.

Petitioner’s AHR disputes the Department’s determination of divestment, arguing that Petitioner was not mentally capable of making a decision at the time of the sale of the life insurance policy to Petitioner’s son and so Petitioner should not be penalized for the sale.

Department policy indicates that divestment occurs when a client transfers a resource within the “look-back period” and for less than “fair market value”. BEM 405. Transferring a resource means giving up all or partial ownership in (or rights to) a resource. BEM 405. The “look back period” is 60 months prior to the baseline date (for transfers made after February 8, 2006). BEM 405. 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.

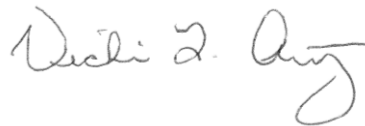
Some transfers are not divestment. BEM 405. However, this transfer does not qualify under any of the exceptions listed in Department policy. The life insurance policy was not transferred to the client's spouse, a blind or disabled child, a child under age 21 or a child over age 21 who has lived in the homestead for at least two years before the client's admission to long-term care (LTC) and provided care that would otherwise have made the client need LTC or waiver services. BEM 405. The Department properly determined divestment applied in this case as the Petitioner's ownership was reduced for less than fair market value.

In this case, the divestment penalty was in effect from December 1, 2015 through December 2, 2015.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department acted in accordance with Department policy when it imposed the divestment penalty.

DECISION AND ORDER

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



VA/db

Vicki L. Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

[REDACTED]

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