

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

IN THE MATTER OF:



MAHS Reg. No.: 15-022029
Issue No.: 2008
Agency Case No.: [REDACTED]
Hearing Date: January 14, 2016
County: Alpena

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, an in-person hearing was held on January 14, 2016, in Alpena, Michigan. Attorney [REDACTED] represented Claimant. [REDACTED] Claimant's daughter and durable power of attorney, personally appeared and testified. The Department was represented by Assistant Attorney General [REDACTED] [REDACTED] Assistance Payment Supervisor [REDACTED] [REDACTED] and Assistance Payment Worker [REDACTED] [REDACTED] personally appeared and testified.

ISSUE

Did the Department properly impose a Divestment penalty from September 1, 2015 through October 2, 2015?

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 a Medical Assistance (MA) recipient and resides in a long-term care facility.
2. On July 2, 2015, Claimant entered long-term care. (Dept Ex. A, p 34).
3. On September 2, 2015, Claimant's daughter and son-in-law refinanced their Buick automobile, and added Claimant's name to the Title.
4. On September 28, 2015, Claimant applied for MA. (Dept Ex. A, pp 30-32).
5. During the look-back period, monies were transferred from Claimant's checking account into Claimant's son-in-law's checking account.

6. The Department considered these transfers a divestment resulting in the imposition of a divestment penalty period based on a divestment of \$ [REDACTED]
7. Claimant was approved for MA effective September 1, 2015, however long-term care could not be paid during the divestment penalty period of September 1, 2015 through October 2, 2015.
8. On November 5, 2015 the Department issued a Health Care Coverage Determination Notice to Claimant which included notification of the divestment penalty. (Dept Ex. A, pp 10-12).
9. On November 10, 2015, the Department received Claimant's Authorized 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, p 1 (10/1/2014). Medicaid is also known as Medical Assistance ("MA"). *Id.* The Medicaid program is comprised of several sub-programs or categories. *Id.* To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.*

In general, the terms Group 1 and Group 2 relate to financial eligibility factors. *Id.* For Group 1, net income (countable income minus allowable income deductions) must be at or below a certain income limit for eligibility to exist. *Id.* The income limit, which varies by category, is for nonmedical needs such as food and shelter. *Id.* Medical expenses are not used when determining eligibility for MAGI-related and SSI-related Group 1 categories. *Id.*

For Group 2, eligibility is possible even when net income exceeds the income limit. *Id.* This is because incurred medical expenses are used when determining eligibility for Group 2 categories. *Id.*

MA-only eligibility is determined on a calendar month basis. BEM 105, p 2. Unless policy specifies otherwise, circumstances that existed, or are expected to exist, during the calendar month being tested are used to determine eligibility for that month. *Id.*

Divestment results in a penalty period in MA, not ineligibility. BEM 405, p 1 (7/1/2015). 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.* 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. BEM 405, p 6.

An arm length transaction is defined as:

A transaction between two parties who are not related and who are presumed to have roughly equal bargaining power. It consists of all the following three elements:

- it is voluntary
- each party is acting in their own self-interest
- it is on an open market. BPG Glossary, p 6 (10/1/2015).

By definition a transaction between two relatives is not an arm length transaction. *Id.*

Transferring a resource means giving up all or partial ownership in, or rights to, a resource. BEM 405, p 1. Resource means all the client's (and spouse's) assets and income. *Id.*; 20 CFR 416.1201.

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, p 6. 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, p 5. The look-back period is 60 months for all transfers made after February 8, 2006 and 36 or 60 months (depending on the type of resource transferred) for transfers made on or before 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. BEM 405, p 11. 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.*

This case concerns two transfers from Claimant's checking account into Claimant's son-in-law's checking account, one for \$ [REDACTED] and the other for \$ [REDACTED] totaling \$ [REDACTED]

Claimant's daughter testified that she and her husband purchased the Buick on December 3, 2014. Claimant's daughter explained that she had traded in her jeep for the Buick because her mother (Claimant) was not able to climb into the jeep. Claimant's daughter stated that she used the Buick to take her mother to doctor appointments, the grocery store, and to get her out of the nursing home so she was not sitting there all day. Claimant's daughter stated that she used the Buick to run around and that she took her mother out of the nursing home two or three times a week.

Claimant was admitted into long-term care on July 2, 2015. Claimant's daughter and husband refinanced the Buick on September 2, 2015, and added Claimant's name to the Title. Claimant's daughter acknowledged that she used \$ [REDACTED] of her mother's money to refinance the Buick that she (Claimant's daughter) already owned.

42 USC section 1396p(c)(1)(I)(i)-(iii) was enacted by Congress to avoid "sham transactions." The transaction by Claimant's son-in-law of \$ [REDACTED] from Claimant's account into his account to pay down on the Buick car loan appears to be a "sham transaction" for the purpose of avoiding the rules governing Medicaid eligibility.

This was not a transaction between two unrelated parties. The transactions were between Claimant and Claimant's son-in-law. Moreover, Claimant's daughter was Claimant's power of attorney. Therefore, this was not an arm length transaction.

The Claimant/Representative asserts that the above transfers should be considered Asset Conversions. Asset Conversion applies when an asset is converted from one asset to another of equal value. Examples provided for in policy are:

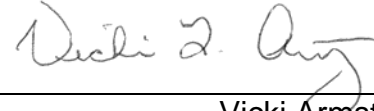
- Using \$5,000 from savings to buy a used car priced at \$5,000
- Trading a boat worth about \$8,000 for a car worth about \$8,000

Here, \$ [REDACTED] was transferred from Claimant's checking account into Claimant's son-in-law's checking account, not for another asset of equal value, but to make payments on a loan for the Buick. Simply adding Claimant's name to the Title of the Buick already owned by Claimant's daughter does not make the transactions applicable under the Asset Conversion provision.

Therefore, the Department established it acted in accordance with Department policy when it determined a divestment existed because the transfers totaling \$ [REDACTED] were not at arm's length.

DECISION AND ORDER

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



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

Date Mailed: **1/29/2016**

VA/nr

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:

