



RICK SNYDER  
GOVERNOR

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

MIKE ZIMMER  
DIRECTOR

[REDACTED]

Date Mailed: March 2, 2016  
MAHS Docket No.: 15-021494  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

### **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 After due notice, telephone hearing was held on February 09, 2016, from Lansing, Michigan. Participants on behalf of Claimant included his authorized hearing representative [REDACTED] of the [REDACTED] (MMAP) and his spouse [REDACTED] (Eligibility Specialist) represented the Department of Health and Human Services (Department). Witnesses on behalf of the Department included [REDACTED] (Family Independence Manager).

### **ISSUE**

Did the Department of Health and Human Services (Department) properly determine the Claimant's eligibility for Long Term Care and a divestment 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 June 22, 2015, the Claimant was admitted to long term care.
2. On August 13, 2015, the Department received the Claimant's application for Medical Assistance (MA).
3. On September 14, 2015, the Department determined that the Claimant possesses an annuity that is actuarially sound but was converted in a manner that resulted in divestment.

4. On September 22, 2015, the Department notified the Claimant that he was approved for Medical Assistance (MA) with a divestment penalty against long term care from June 1, 2015, through October 10, 2015.
5. On November 12, 2015, the Department received the Claimant's request for a 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.

Divestment means a transfer of a resource by a client or his spouse that is within a specified time, for less than fair market value, and not excluded by policy. Divestment results in a penalty period where the client's expenses for long term care (LTC) services, home and community-based services, home help, and home health are not covered by the client's Medical Assistance (MA) benefits. Department of Human Services Bridges Eligibility Manual (BEM) 405 (January 1, 2015), p 1.

A person's baseline date is the first date that the client was eligible for Medicaid and receiving long term care. BEM 405, p 6.

An annuity purchased or amended by, or for the benefit of, the applicant or recipient on or after February 8, 2006 must name the State of Michigan as the remainder beneficiary. Department of Health and Human Services Bridges Administrative Manual (BAM) 401 (July 1, 2015), p 5.

On August 13, 2015, the Department received the Claimant's application for Medical Assistance (MA). On September 14, 2015, the Department notified the Claimant that he was approved for Medical Assistance (MA) as of June 1, 2015, with a patient pay amount. The Department also notified the Claimant that it would impose a divestment penalty against any longer term care benefits from June 1, 2015, through October 10, 2015. The divestment penalty was the result of a trust that did not name the State of Michigan as the remainder beneficiary.

The Claimant's representative testified that the State of Michigan later designated as the remainder beneficiary.

However, once a divestment penalty is in effect, return of, or payment for, resources cannot eliminate any portion of the penalty period already past. BEM 405, p 16. The Claimant does not claim to have provided the Department with verification that his trust was brought into compliance with the requirements of BEM 401 before October 10, 2015, and there was no remaining divestment penalty to reverse after this verification was received.

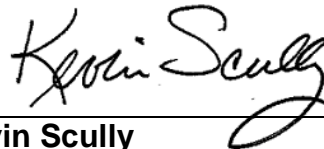
The Claimant's representative argued that the Claimant did not have an opportunity to correct his trust but would have had this opportunity if he had delayed his application for retroactive benefits. If the Claimant had not applied for retroactive benefits at the same time as his application for benefits, his initial eligibility date would have been different, which would have changed his baseline date.

However, Department policy on reversing and recalculating divestment penalties does not include any exceptions for these circumstances. Department policy prohibits eliminating a penalty period that has already past. The Department's actions were consistent with Department policy and the Department is not obligated to determine the effect on eligibility of proposed financial arrangements such as a proposed trust. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (July 1, 2015), p 14.

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 determined the divestment penalty as applied towards the Claimant's Medical Assistance (MA) benefits.

### **DECISION AND ORDER**

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



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**Kevin Scully**

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

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**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

**DHHS**

[REDACTED]

**Petitioner**

[REDACTED]

**Authorized Hearing Rep.**

[REDACTED]