



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: April 7, 2016
MAHS Docket No.: 16-000682

[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki 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, a telephone hearing was held on April 1, 2016, from Lansing, Michigan. The Petitioner was represented by [REDACTED]. Petitioner was not present. Petitioner's daughter, [REDACTED], and grandchildren, [REDACTED], personally appeared and testified. The Department of Health and Human Services (Department) was represented by [REDACTED] and Eligibility Specialist [REDACTED].

ISSUE

Whether the Department properly imposed a divestment penalty based on the transfer of funds from January 1, 2010 through September 30, 2014?

FINDINGS OF FACT

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

1. The Department submitted Exhibit A, pages 1-604 and Exhibit B, pages 1-15 into evidence without objection. (Dept. Exh. A, pp 1-604; Dept. Exh. B, pp 1-15).
2. The Petitioner resides in a long-term care facility.

3. The Petitioner's daughter was granted durable power of attorney "POA" to act on behalf of Petitioner in 2009, when Petitioner entered assisted living. (Testimony of Nancy Graham).
4. On September 30, 2014, Petitioner applied for Medicaid. (Dept. Ex. B, pp 1-5).
5. Petitioner made gifts:
 - a. In the amount of [REDACTED] in 2010.
 - b. In the amount [REDACTED] in 2011.
 - c. In the amount of [REDACTED] in 2012.
 - d. In the amount of [REDACTED] in 2013.
 - e. In the amount of [REDACTED] in 2014. (Dept. Ex. B, pp 11-15).
6. On December 17, 2015, the Department issued Petitioner a Health Care Coverage Determination Notice informing her that she was approved for a monthly patient pay amount of [REDACTED] from September 1, 2014 through December 31, 2014 and a patient pay amount of [REDACTED] from January 1, 2015 ongoing. The Notice also informed Petitioner that she would have to serve a divestment penalty period from September 1, 2014 through June 3, 2016. (Dept. Ex. A, pp 5-8).
7. On January 8, 2016, the Department received Petitioner's timely written request for hearing. (Dept. Ex. A, pp 1b-1c).

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 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.*

The look-back period in this case is September 30, 2009 through September 30, 2014. This was uncontested.

Petitioner’s daughter and POA credibly testified that she first noticed a change in Petitioner’s behavior as early as 2000. She stated that Petitioner went into assisted living in 2009 because she could not remember things and was no longer able to drive. By July, 2010, Petitioner’s daughter said that Petitioner was no longer able to remember her grandchildren and sometimes did not recognize her.

Petitioner’s daughter and grandchildren credibly testified to a long tradition of giving by Petitioner to her daughter and grandchildren, particularly in the area of education, in that Petitioner paid for tuition and books for her grandchildren. Petitioner also helped with mortgages, medical bills and home repairs.

Petitioner’s daughter testified that she continued to do what Petitioner wanted her to do, even after the Petitioner was unable to direct her to do so. Petitioner’s daughter stated that Petitioner was no longer able to direct her due to dementia when she entered assisted living in 2009. Petitioner’s daughter stated that she did nothing greater than what Petitioner had done for the other children.

Petitioner’s daughter stated that everything in the summaries of divestments were gifts. The record shows that a total of [REDACTED] was gifted to Petitioner’s family members beginning in 2010 through 2014.

Petitioner relies on BEM 405, p 11 (7/1/2014), regarding Transfers for Another Purpose. This provision provides that transfers exclusively for a purpose other than to qualify or remain eligible for MA are not divestment. However, this provision in relevant part also provides that transfers for less than fair market value are for eligibility purposes until the client or spouse provides convincing evidence that they had no reason to believe long-term care or waiver services might be needed.

The example provided for in policy relates to a 40-year-old individual who was in good health and transferred his vacation cottage to his nephew. The next day the individual is in an automobile accident necessitating the need for long-term care. This transfer was not divestment because the individual could not have anticipated his need for long-term care services at the time of transfer.

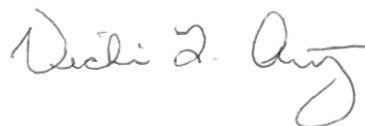
Conversely, Petitioner at the time of the 2010 transfers was 85 years old and living in an assisted living facility. Petitioner's daughter purportedly paid for her children's education, a roof for her home and a myriad of other expenses on the belief that Petitioner would have continued to make such payments to her family as she had in the past. However, the need for long-term care in this case was reasonably foreseeable at the time of transfers, because Petitioner was living in an assisted living facility and according to Petitioner's daughter, was no longer able to direct her in making payments to or for her family.

In this case, transfers were made to relatives and non-relatives for various reimbursements and services. The burden was on Petitioner to provide convincing evidence that they had no reason to believe long-term care or waiver services might be needed. While Petitioner's family credibly testified that Petitioner would have wanted to pay for their education and other services, at the time of the beginning of the transfers in 2010, Petitioner's daughter knew Petitioner would be requiring long-term care and/or waiver services. Further, Petitioner's physician provided a Certificate of Incapacity that on August 4, 2014, Petitioner was unable to participate in her own financial decisions and her dementia over the past 3 years was progressing into severe short term memory loss and behavioral issues.

Therefore, 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 determined that a divestment occurred.

DECISION AND ORDER

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



VLA/db

Vicki 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]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
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