



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: May 3, 2016
MAHS Docket No.: 16-001070
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION

Following the 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 April 26, 2016, from Traverse City, Michigan. The Petitioner, [REDACTED], was represented by her conservator, [REDACTED]. The Department of Health and Human Services (Department) was represented by Assistance Payments Supervisor, [REDACTED] and Assistance Payments Worker, [REDACTED].

PROCEDURAL HISTORY

The hearing was originally scheduled for March 24, 2016 at 9:30 AM. On March 14, 2016, the Administrative Law Judge received the Petitioner's conservator's request for an adjournment. On March 18, 2016, the undersigned Administrative Law Judge issued an Order of Adjournment for an In-person Hearing. A new notice of hearing issued for April 26, 2016 and the hearing commenced as rescheduled.

The following exhibits were offered and admitted into evidence:

- Department: A--September 29, 2015, Assistance Application and Order Regarding Appointment of Conservator.
B— October 6, 2015, Verification Checklist.
C— Petitioner's Conservator's history of the trailer at issue.
D— Copies of the title of the trailer at issue.
E— February 3, 2014, Schmidt Mobile Home Brokers Purchasers Closing Statement.
F— Petitioner's Conservator's time-line of the three referrals made to Adult Protective Services.
G— October 8, 2015, letter from Adult Protective Services.

- H— instructions for calculating a divestment penalty period.
I----January, 15, 2016, Health Care Coverage Determination Notice.
- Petitioner: 1—Petitioner’s conservator’s summary of events and supporting documentation.
2— Petitioner’s conservator’s summation and supporting documentation from Adult Protective Services.

ISSUE

Did the Department properly take action to impose a divestment penalty on the Petitioner’s Medical Assistance (MA) case?

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 Petitioner is an ongoing recipient of MA benefits.
2. On March 27, 2013, the Petitioner transferred a trailer to her Power of Attorney, [REDACTED] for \$ [REDACTED].
3. On December 1, 2014, [REDACTED] transferred trailer to [REDACTED] and no sales price was disclosed.
4. On February 3, 2014, the trailer was transferred from [REDACTED] to Schmidt Mobile Homes Broker/Noble Homes for \$ [REDACTED].
5. The Petitioner’s conservator has asserted that the Petitioner was not competent to make the transfer of the trailer to [REDACTED].
6. During an Adult Protective Services Investigation with the referral date of July 12, 2011, it was concluded that the Petitioner’s cognitive function with diminishing and that her ability to make informed decisions was therefore compromised. The Petitioner wanted to telephone her Power of Attorney, but was perplexed by the phone and couldn’t manage to dial the number. The Petitioner thought that it was December or January at the time of this referral. The Petitioner reported that she was a widow and had two children that had both died, but could not even say when and how it was that her children had died.
7. Subsequent to the July 12, 2011 referral, three more referrals (May, 2013, December, 2013 and February, 2014) were made to Adult Protective Services on behalf of the Petitioner regarding concerns about the Petitioner’s possible financial exploitation.

8. A January 17, 2014, neuropsychological evaluation has diagnosed the Petitioner with dementia, likely Alzheimer's, memory loss and depression. This evaluation indicates that the Petitioner is not competent to manage her finances.
9. On October 8, 2015, Adult Protective Services concluded that there was not a preponderance of evidence to support the allegations of the Petitioner's financial exploitation.
10. On January 15, 2016, the Department sent the Petitioner a DHS-1606, Health Care Coverage Determination Notice imposing a divestment penalty from October 1, 2015 to January 31, 2016 with a \$ [REDACTED] monthly patient pay and February 1, 2016 ongoing with a \$ [REDACTED] monthly patient pay.

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.

In this case, the Petitioner's conservator expressed that the Petitioner's previous Power of Attorney mismanaged the Petitioner's funds that the Petitioner was not mentally competent to handle her finances. Indeed, the Petitioner's conservator argued that the Petitioner could not possess the requisite intent to dispose of the trailer in an effort to establish eligibility for benefits. The Department personnel at the hearing testified that they also believed that the Petitioner had been a victim of her Power of Attorney's financial exploitation.

Bridges Eligibility Manual (BEM) 405 (2016) p. 1, defined divestment as a transfer of a resource by a client or spouse that is for less than fair market value that occurs within a specified look back period, that is not listed under "transfers that are not divestment." This Administrative Law Judge concludes the transfer in this case was a transfer for another purpose as defined by BEM 405 p. 11. Transfers for another purpose are defined as transfers exclusively for a purpose other than to qualify or remain eligible for MA. In this case, the evidence establishes that the Petitioner was persuaded to transfer the trailer for \$ [REDACTED] to her Power of Attorney. The Petitioner's Power of Attorney later sold the trailer, presumably for much more money, to another party who later sold the trailer for \$ [REDACTED]. The Petitioner's Power Attorney was later admonished by the Grand

Traverse County Probate Court for her use of the Petitioner's money. The court also terminated her Power of Attorney.

Because this Administrative Law Judge concludes that the Petitioner lacked the requisite intent to transfer an asset for less than fair market value for the exclusive purpose to remain eligible for MA, the transfer at issue here is not divestment. 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 did not act in accordance with Department policy when it took action to impose a divestment penalty on the Petitioner's MA case.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY, INCLUDING ISSUING A NEW ELIGIBILITY NOTICE, AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. We determine the Petitioner's eligibility for MA back to October 1, 2015 with no divestment penalty, and
2. issue the Petitioner any supplement she may thereafter be due.



SH/nr

Susanne E. Harris
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

DHHS

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]