



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 13, 2016
MAHS Docket No.: 16-004195
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 May 4, 2016, from Lansing, Michigan. Petitioner was represented by her authorized hearing representative [REDACTED]. LTC Worker [REDACTED] [REDACTED] appeared for the Department and testified. Department's Exhibit A, pages 1 – 4 was admitted into evidence. Petitioner's Exhibit 1, pages 1 - 3 was admitted into evidence.

ISSUE

Did the Department properly process Petitioner's February 26, 2016 application for Medical Assistance (MA) Long Term Care (LTC) benefits and determine a divestment penalty period of April 1-28, 2016?

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 November 10, 2015, Petitioner and her husband quit claimed their vacant residential lot at [REDACTED] to [REDACTED] for \$[REDACTED]. The Pueblo County Assessor's Office lists the actual value of the property at \$[REDACTED].
2. On February 26, 2016, Petitioner submitted an application for Medical Assistance (MA) LTC benefits.

3. On March 24, 2016, Petitioner was sent a Health Care Coverage Determination Notice (DHS-1606) which stated she was approved for LTC benefits with a divestment penalty period of April 1 – 28, 2016.
4. On April 1, 2016, Petitioner submitted a hearing request.

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.

During this hearing the property transfer was not denied. Petitioner's authorized hearing representative asserted that the divestment penalty will cause a hardship. Bridges Eligibility Manual (BEM) 405 MA Divestment at page 16 states:

UNDUE HARDSHIP

Waive the penalty if it creates undue hardship. Assume there is no undue hardship unless you have evidence to the contrary.

Undue hardship exists when the client's physician (M.D. or D.O.) says:

Necessary medical care is **not** being provided, and
The client needs treatment for an emergency condition.

A medical emergency exists when a delay in treatment may result in the person's death or permanent impairment of the person's health.

See BEM 100, Policy Exception Request Procedure.

VERIFICATION REQUIREMENTS

Obtain a statement from the LTC or waiver client's physician (M.D. or D.O.) to verify:

Undue hardship

A letter from [REDACTED] was submitted on Petitioner's behalf. The letter states that Petitioner has "paralysis of the left side of her body upper and lower extremity and inability to speak. This necessitates 24 hour care and assist with all of her activities of daily living and dispensing her medications, monitoring of vitals periodically as she has a cardiac dysrhythmia and she is on a blood thinner to prevent another stroke."

A quick on-line search (Cleveland Clinic Center for Continuing Education; Johns Hopkins Medicine; Mayo Clinic) of cardiac dysrhythmia shows it is a disturbance in the regular rhythm of the heartbeat which could be too fast, too slow or irregular. The condition is caused by problems with the electrical signals that tell the heart muscle to contract. The condition can cause stroke and/or sudden cardiac death.

While the evidence in this record establishes that divestment occurred, it also establishes that applying the divestment penalty would cause undue hardship by preventing necessary medical care for Petitioner's emergency condition. 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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Petitioner should be subject to a divestment penalty.

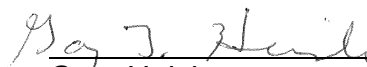
DECISION AND ORDER

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

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

1. Waive the divestment penalty in accordance with Department policy in Bridges Eligibility Manual (BEM) 100.

GH/nr



Gary Heisler
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]

Petitioner

[Redacted]

Authorized Hearing Rep.

[Redacted]