



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: July 20, 2016
MAHS Docket No.: 16-006717
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 June 23, 2016, from Lansing, Michigan. Petitioner was represented by his daughter and authorized representative [REDACTED] and her authorized hearing representative [REDACTED]. Hearing Facilitator [REDACTED] and [REDACTED] appeared for the Department and testified. Department's Exhibit A, pages 1 - 43 was admitted into evidence. Petitioner's Exhibit 1, pages 1- 9 was admitted into evidence.

ISSUE

Did the Department properly determine Petitioner's eligibility for Medical Assistance (MA) Long Term Care (LTC) on March 7, 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 June 26, 2015, [REDACTED] Quit Claim deeded Petitioner's residence to herself, using the Power of Attorney assigned to her by Petitioner and his spouse.
2. On July 9, 2015, [REDACTED] submitted a Medical Assistance (MA) Long Term Care (LTC) application for petitioner.
3. On September 4, 2015, the Department issued a Health Care Coverage Determination Notice (DHS-1606) regarding Petitioner's LTC application. The Department determined that Petitioner was eligible for LTC from July 1, 2015

ongoing with a \$ [REDACTED] patient pay amount but that the transfer of the residence was a divestment so a penalty was applied from July 1, 2015 through May 29, 2016.

4. On January 25, 2016, [REDACTED] [REDACTED] Quit Claim deeded Petitioner's residence back to Petitioner and his spouse.
5. On March 7, 2016, The Department issued a Benefit Notice (DHS-176) which stated that the divestment penalty was removed as of January 25, 2016.
6. On May 12, 2016, Debra Turnbull 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.

Bridges Eligibility Manual (BEM) 405 MA Divestment contains the Department's policies relevant to this situation. It is not disputed that transfer of the residence was a divestment. The reason behind this hearing request was the impact of the residence being returned. BEM 405 at page 16 states:

PENALTY PERIOD

Resources Returned

Cancel a divestment penalty if either of the following occurs before the penalty is in effect:

All the transferred resources are returned and retained by the individual.

Fair market value is paid for the resources.

Recalculate the penalty period if either of the following occurs while the penalty is in effect:

All the transferred resources are returned.

Full compensation is paid for the resources.

Use the same per diem rate originally used to calculate the penalty period.

Once a divestment penalty is in effect, return of, or payment for, resources **cannot** eliminate any portion of the penalty period already past. However, recalculate the penalty period. The divestment penalty ends on the later of the following:

The end date of the new penalty period.

The date the client notified you that the resources were returned or paid for.

Following review of this section of policy, Petitioner raised the issue of an undue hardship. BEM 405 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.

A psychiatric emergency exists when immediate treatment is required to prevent serious injury to the person or others.

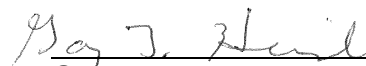
See BEM 100, Policy Exception Request Procedure.

No evidence consistent with the requirements of Bridges Eligibility Manual (BEM) 405 were entered. Therefore, it is assumed there is no undue hardship in the absence of evidence to the contrary. 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 Petitioner's eligibility for Medical Assistance (MA) Long Term Care (LTC) on March 7, 2016.

DECISION AND ORDER

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

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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]

Authorized Hearing Rep.

[REDACTED]