



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: October 3, 2016
MAHS Docket No.: 16-007544
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 3-way telephone hearing was held on September 6, 2016, from Lansing, Michigan. The Petitioner was represented by Attorney [REDACTED]. The Department of Health and Human Services (Department) was represented by Assistant Attorney General [REDACTED]. [REDACTED] AP Supervisor and [REDACTED] Eligibility Specialist testified for the Department.

ISSUE

Did the Department properly find that divestment occurred and impose 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. Petitioner applied for MA-LTC on April 27, 2016, with a request for retroactive assistance back to March 2016.
2. [REDACTED] submitted the following letter dated May 10, 2016, to the Department: "NON-CONSENT TO SALE The undersigned [REDACTED], is a joint owner on a home with [REDACTED]. The undersigned refuses to sell or transfer this real estate at this time."
3. On May 12, 2016, a Health Care Coverage Determination Notice was sent to Petitioner that stated the following: "Medicaid will not pay for long term care

expenses from 3/1/16 through 3/11/18 because you transferred assets (transferred 1% ownership of home on 12/23/14) for less than fair market value.”

4. On June 7, 2016, Petitioner requested hearing contesting the finding of divestment.

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.

Joint Owners and Transfers

When a client jointly owns a resource with another person(s), any action by the client or by another owner that reduces or eliminates the client's ownership or control is considered a transfer by the client. BEM 405 p.3.

In this case, Petitioner transferred a 1% ownership interest to her daughter [REDACTED] on December 23, 2014. After the application for Medicaid was filed the Department requested information about [REDACTED] position about the potential sale of the home. [REDACTED] responded by submitting a letter dated May 10, 2016, that reads as follows: "NON-CONSENT TO SALE The undersigned [REDACTED], is a joint owner on a home with [REDACTED]. The undersigned refuses to sell or transfer this real estate at this time." Based on that letter, the Department found that divestment occurred and imposed a divestment penalty period from March 1, 2016, through March 11, 2018. The Department was correct to rely on the statement provided by the Petitioner's co-owner and find that divestment occurred because, pursuant to the statement of the co-owner, Petitioner's ability to sell the property was eliminated. BEM 405

Petitioner's attorney argued that [REDACTED] and her co-owner misunderstood what information the Department was seeking. Petitioner's attorney argued that [REDACTED] was not refusing to sell and in fact consented to listing the property on May 9, 2016. Petitioner's Attorney submitted documentation showing the property was listed for sale on May 9, 2016. Petitioner had an opportunity to provide a clear indication and the status of her ability to sell the property and provided a clear and concise statement that she was not able sell. At the time the Department made its determination, the only

information provided to the Department required that they find divestment and impose divestment penalty. That action was proper and correct and consistent with Department policy.

DECISION AND ORDER

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 that divestment occurred and imposed divestment penalty of 24 months and 11 days.

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

AM/las



Aaron McClintic
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

Counsel for Respondent

[REDACTED]

DHHS

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]

Counsel for Petitioner

[REDACTED]