



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 4, 2016
MAHS Docket No.: 16-010951
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, a telephone hearing was held on September 21, 2016, from Lansing, Michigan. The Petitioner was represented by her Attorney, [REDACTED] of [REDACTED]; her Guardian, [REDACTED]; her Guardian's husband, [REDACTED] and her Guardian's daughter, [REDACTED]. The Department of Health and Human Services (Department) was represented by Assistant Attorney General, [REDACTED]; Assistance Payments Supervisor, [REDACTED]; Long Term Care Specialist, [REDACTED] and Family Independence Specialist, [REDACTED] who also served as [REDACTED] interpreter and assisted with translation.

PROCEDURAL HISTORY

This matter was originally scheduled to be heard on September 7, 2016. On September 6, 2016, the Petitioner's Attorney requested an adjournment. The following exhibits were offered and admitted into evidence:

Department: A—July 14, 2016, Hearing Decision.
B--- September 23, 2015, Medicaid Application.
C--- November 20, 2015, Medicaid Application.
D--- January 29, 2016, Medicaid Application.
E--- Retro-Medicaid Application.
F--- Amended Divestment calculation and supporting documents.
G--- July 15, 2016, Benefit Notice.
H--- Case Comments.

Petitioner: 1--- Representative Payee Reports dating back to May 1, 2010.

2-- December 7, 2015, Irrevocable Funeral Contract Certification.

(These documents were admitted into evidence over the Department's objection that the exhibits are not timely. They were not admitted for the truth of the matter asserted but rather to show that some sort of verification exists to show that the Petitioner's benefits were spent on behalf of the Petitioner. These documents were not found to be unduly prejudicial to the Department as the Department was informed as early as February, 2016 that the Petitioner's benefits were being spent on her behalf for room and board.)

ISSUE

Did the Department properly determine the Petitioner's 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. At all times relevant to this case, the Petitioner has resided with her Guardian and her Guardian's family.
2. On July 13, 2016, a Hearing Decision and Order was issued instructing the Department to redetermine the Petitioner's divestment penalty. This Decision and Order was a result of a second hearing regarding this matter.
3. On July 15, 2016, the Petitioner's divestment penalty was recalculated. The result was that the divestment penalty increased from \$ [REDACTED] to \$ [REDACTED].
4. The divestment amount reflects regular deposits of the Petitioner's Social Security checks, starting September 1, 2010 through November 3, 2015, into a bank account which is held by the Petitioner's Guardian and her husband.
5. On July 15, 2016, the Department sent the Petitioner's Guardian a Benefit Notice informing the Petitioner's Guardian that the Petitioner was subject to a divestment penalty of \$ [REDACTED] beginning August 1, 2016 through December 29, 2016.
6. On August 1, 2016, the Department received the Petitioner's Attorney's written hearing request protesting the determination of divestment and any divestment amount.

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.

Additionally, a divestment is a transfer of the Petitioner's resources that is with-in the look-back period and that is for less than fair market value. It is a transfer of assets that would create a penalty period. BEM 405 (2016), p. 1. The penalty period is a period of disqualification from MA for Long Term Care. In other words, the penalty period is the number of months of long-term care that will not be covered by MA. Divestment is a type of transfer of the resource and not an amount of resources transferred. Divestment results in a penalty period for MA, not in eligibility. BEM 405, p. 1.

BAM 130 (2016) p. 1, provides that verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. Verification is usually required at application/redetermination and for a reported change affecting eligibility for benefit level. If the individual indicates the existence of a disability that impairs their ability to gather verifications and information necessary to establish eligibility for benefits, the Department is to offer to assist the individual and the gathering of such information.

The Department must tell the client what verification is required, how to obtain it and the due date using the DHS-3503, Verification Checklist to request verification. The client must obtain required verification, but the local office must assist if they need in request help. If neither the client nor the local office can obtain verification despite a reasonable effort, use the best available information. If no evidence is available, the worker is to use his or her best judgment. A **collateral contact** is a direct contact with a person, organization or agency to verify information from the client. It might be necessary when documentation is not available or when available evidence needs clarification. BAM 130 p. 3.

The Department is to allow 10 calendar days for the client to provide the verification that is requested. Verifications are considered to be timely if received by the date they are due. Department workers are instructed to send a negative action notice when the client indicates a refusal to provide a verification or the time period given has elapsed and the client has not made a reasonable effort to provide it.

Before determining eligibility, they Department is to give the client a reasonable opportunity to resolve any discrepancy between the client's statements and information from another source.

Lastly, At BAM 105 (2016) p. 15, provides that the local office must assist clients who are asked for help in completing forms, gathering verifications, and/or understanding written correspondence sent from the Department. Particular sensitivity must be shown to clients who are illiterate, **disabled or not fluent** in English.

In this case, the Petitioner's Attorney argues that the Petitioner received fair market value for depositing her Social Security checks into her Guardian's account. The Petitioner has been disabled since birth and suffers from Down's syndrome, dementia and, according to her Attorney, mild retardation. The Petitioner's Guardian has cared for the Petitioner since she was born, in her home. The Petitioner's Guardian does not speak English. There is no evidence that the Petitioner's Guardian has communicated with the Department with the assistance of a certified interpreter, but rather has communicated with the assistance of her daughter who speaks both languages. It is not contested in this case, that the Department has determined that all of the deposits of the Petitioner's Social Security checks in the Petitioner's Guardian's bank account were counted toward the divestment penalty regardless of the Petitioner's Guardian's assertion that she has housed, clothed and fed the Petitioner for years.

The Petitioner's Guardian has asserted, since at least February 2016, that she has housed, clothed and fed the Petitioner for years. The Department testified that it requested verification of these costs, which have not been allowed to offset the divestment penalty, but that no verification was submitted. There is no Verification Checklist in evidence. The Department's post-hearing brief disputes the accuracy of the Petitioner's payee representative reports to the Social Security Administration, yet it remains uncontested that these reports were acceptable to the Social Security Administration.

Furthermore, this Administrative Law Judge concludes that a payee representative report completed during the year in which the costs were incurred (even if the Petitioner's Guardian indicates to the Social Security Administration that the costs are estimated) is much better evidence than the Petitioner's Guardian's written statements on copies of the bank accounts made several years later, which is also not verification at all, but rather a statement of the Petitioner's Guardian which policy requires be verified. The evidence does not include a Verification Checklist and does therefore not reflect what verification of costs the Petitioner's Guardian was asked to submit, if any.

In such a case, the policy provides that if neither the client nor the local office can obtain verification despite a reasonable effort, the Department is to use the best available information. If no evidence is available, the worker is to use his or her best judgment. This Administrative Law Judge concludes that simply disallowing the costs in this case is not in accordance with departmental policy. The Department is to use the best evidence available or use its best judgment, and this Administrative Law Judge concludes that is not the Department's best judgment to simply disallow the costs when there is no evidence to indicate that it even sought verification of such costs in the first instance. The Department is to use the best evidence available. The payee representative reports filed by the Petitioner's Guardian were acceptable to the Social

Security Administration and are likely the best evidence available as they are filed contemporaneously with the costs being incurred.

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 did not act in accordance with Department policy when it took action to determine the Petitioner's divestment penalty.

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

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

1. Recalculate the Petitioner's eligibility for MA, and
2. Allow for the Petitioner's Guardian to submit acceptable verification of the Petitioner's Guardian's cost of care for the Petitioner, and
3. Consider that the Petitioner's Guardian's payee representative reports are acceptable verification of the Petitioner's Guardian's cost of care for the Petitioner, and
4. If appropriate after determining eligibility, issue the Petitioner any supplement she may thereafter be due.
5. The Petitioner's Attorney retains the right to request a hearing on the new eligibility determination.



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

Counsel for Respondent

[REDACTED]

DHHS

[REDACTED]

Petitioner

[REDACTED]

Counsel for Petitioner

[REDACTED]