



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 29, 2016
MAHS Docket No.: 16-000313
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 March 10, 2016, from Lansing, Michigan. Petitioner was represented by his daughter [REDACTED] and his grandson [REDACTED]. The Department was represented by Assistance Payments Supervisor [REDACTED].

ISSUE

Did the Department properly apply a divestment penalty to Petitioner's Medical Assistance (MA), from February 1, 2016 to July 10, 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 March 11, 2011, Petitioner assigned durable power of attorney to his grandson [REDACTED] with his daughter [REDACTED] as alternate.
2. On March 11, 2011, Petitioner signed a Quit Claim Deed for the property described as "Lot Numbered 83, WESTMORELAND, according to the recorded plat thereof, as recorded in Liber 3 of Plats, Page 18, Roscommon County Records" in which he is the grantor of a joint tenancy with full rights of survivorship to himself and his grandson [REDACTED]. It is unknown if the quit claim deed was registered.
3. On April 19, 2013, a Quit Claim Deed was registered in Roscommon County. In the Deed Petitioner is the grantor and quit claims the premises at "Lot Numbered 83,

WESTMORELAND, according to the recorded plat thereof, as recorded in Liber 3 of Plats, Page 18, Roscommon County Records” to [REDACTED]. The Deed also specifies that “the Grantor shall have an exclusive life estate in the premises.”

4. On July 1, 2013, Petitioner’s daughter, [REDACTED] and her husband [REDACTED] used the property as security to take out a home equity loan in the amount of \$ [REDACTED] for term of five years.
5. Petitioner is currently an ongoing recipient of Long Term Care Medical Assistance (MA) benefits.
6. During review of Petitioner’s case, the Department discovered the property had been Quit Claimed to Petitioner’s grandson and that Petitioner’s daughter had a mortgage on the property.
7. On December 29, 2015, the Department issued a Health Care Coverage Determination Notice (DHS-1606) which stated Petitioner was eligible for Medical Assistance (MA) from January 1, 2016 ongoing with a \$ [REDACTED] monthly patient pay. The notice also stated that Medicaid would not pay for Petitioner’s long-term care or community-based services from February 1, 2016 through July 10, 2016 due to divestment.
8. On January 8, 2016, [REDACTED] 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.

In this case the Department determined that a divestment occurred based on the April 19, 2013 quit claim deed. There is no evidence showing whether or not the March 11, 2011 quit claim deed was registered. The validity of the April 19, 2013 quit claim deed is dependent on whether the 2011 quit claim deed was registered. Neither did the Department address the home equity loan which is still in existence. An assumption that the April 19, 2013 quit claim deed is valid and that the previous quit claim deed and

secured interest by the bank are of no concern does not meet the Department's burden of proof.

This is a very complex web of legal issues. It is not the responsibility of an Administrative Law Judge to make the Department's case. If the local office staff do not have the legal expertise to address all the issues the situation can be referred to the Department's legal office.

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 applied a divestment penalty to Petitioner's Medical Assistance (MA), from February 1, 2016 to July 10, 2016.

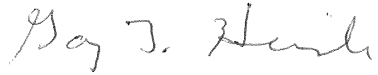
DECISION AND ORDER

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, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Remove the divestment penalty.
2. Supplement Petitioner any benefits he was otherwise eligible for but did not receive due to this unsupported action.

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]