



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: May 3, 2016
MAHS Docket No.: 16-002687
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 April 19, 2015, from Lansing, Michigan. Petitioner was represented by her POA and son, [REDACTED]. The Department was represented by [REDACTED] (LTC) worker [REDACTED]. Testimony was received from all participants. Department's Exhibit A, pages 1-31 was admitted into evidence.

ISSUE

Did the Department properly deny Petitioner's January 19, 2016 application for Medical Assistance (MA) Long Term Care (LTC) benefits?

Did the Department properly process Petitioner's February 1, 2016 application for Medical Assistance (MA) Long Term Care (LTC) benefits and determine a divestment penalty period of February 1-23, 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 September 3, 2015, Petitioner was admitted to a nursing facility.
2. On September 7, 2015, Petitioner's funds were used to purchase an \$ [REDACTED] gun safe which is in her son's home.

3. On September 12, 2015, Petitioner's funds were used to purchase a \$ [REDACTED] loveseat which is in her son's home.
4. On September 12, 2015, Petitioner's funds were used to purchase a \$ [REDACTED] rocker which is in her son's home.
5. On October 10, 2015, Petitioner's funds were used to purchase a \$ [REDACTED] refrigerator which is in her son's home.
6. On January 13, 2016, a \$ [REDACTED] cashier's check was drawn on Petitioner's bank account and made payable to [REDACTED] the nursing facility she resides in.
7. On January 19, 2016, an application for Medical Assistance (MA) [REDACTED] (LTC) benefits was submitted on Petitioner's behalf.
8. On January 22, 2016, a Health Care Coverage Determination Notice (DHS-1606) was sent to Petitioner which stated her January 19, 2016, application for Medical Assistance (MA) [REDACTED] (LTC) benefits was denied due to excess assets.
9. On February 1, 2016, another application for Medical Assistance (MA) [REDACTED] [REDACTED] (LTC) benefits was submitted on Petitioner's behalf.
10. On February 16, 2015, a Health Care Coverage Determination Notice (DHS-1606) was sent to Petitioner which stated she was eligible for Medical Assistance (MA) [REDACTED] (LTC) benefits from February 1, 2016 with a \$ [REDACTED] monthly patient pay. The notice also stated that Medicaid would not pay for long term care from February 1-23, 2016 due to a transfer of assets for less than fair market value.
11. March 1, 2016, Petitioner submitted a hearing request regarding both applications and identifying her son, [REDACTED] as a Power of Attorney and authorized hearing representative.

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.

January 19, 2016 Application

The Department denied Petitioner's January 19, 2016 application based on excess assets. The Department counted \$ [REDACTED] in Petitioner's share draft account, \$ [REDACTED] in in Petitioner's primary share account and the \$ [REDACTED] check paid to Petitioner's nursing facility. (\$ [REDACTED] + \$ [REDACTED] + \$ [REDACTED] = \$ [REDACTED]. In accordance with Bridges Eligibility Manual (BEM) 400 Assets, Petitioner's asset limit for SSI-related MA as a group of one is \$ [REDACTED].

In this case the Department has denied Petitioner's application based on their classification of monthly payments made from Petitioner's checking account to the Nursing Facility as pre-payments for her [REDACTED] (LTC). The evidence in this record shows that on January 13, 2016, a \$ [REDACTED] cashier's check was drawn on Petitioner's bank account and made payable to [REDACTED] the nursing facility she resides in. The Department cites Bridges Eligibility Manual (BEM) 405 MA Divestment page 13 as the authority for their action. Page 13, under Penalty Period, Computing Penalty Period provides the following note:

Note: An individual is not eligible for MA in a month they have pre-paid for LTC. Because federal law directs that a resident in a nursing facility must have access to all monies held by the facility for the resident, count the money held by a nursing facility as cash.

This section of BEM 405, which the Department cites, is applicable to circumstances where an applicant has given a nursing facility money for future expenses. Under those circumstances the money still belongs to the applicant. In this case Petitioner entered the nursing facility on September 3, 2015 and has undoubtedly incurred expenses for her care there. If the January 13, 2016 payment is payment for already incurred care expenses, the money does not belong to Petitioner. There is no evidence presented which shows whether the payment is being held by the nursing facility for bills not yet incurred or is a payment toward expenses that have already accrued. The Department has failed to provide sufficient evidence to show that Petitioner was over assets during January 2015.

February 1, 2016 Application and Divestment

This application was approved so the only issue in dispute is the divestment penalty. Bridges Eligibility Manual (BEM) 405 MA Divestment provides guidance for determining divestment. In this case the Department classified purchase of four items with Petitioner's funds as divestment. The four items were all purchased after Petitioner entered the nursing facility and are all in her son's home. BEM 405 provides in relevant part:

DEPARTMENT POLICY

Medicaid (MA) ONLY

Divestment results in a penalty period in MA, **not** ineligibility. Divestment policy does **not** apply to Qualified Disabled Working Individuals (QDWI); see Bridges Eligibility Manual 169.

Divestment is a type of transfer of a resource and not an amount of resources transferred.

Divestment means a transfer of a resource (see RESOURCE DEFINED below and in glossary) by a client or his spouse that are all of the following:

Is within a specified time; see LOOK-BACK PERIOD in this item.

Is a transfer for LESS THAN FAIR MARKET VALUE; see definition in glossary.

During the penalty period, MA will **not** pay the client's cost for:

Long Term Care (LTC) services.

Home and community-based services.

Home help.

Home health.

MA will pay for other MA-covered services.

TRANSFER OF A RESOURCE

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. **Not** all transfers are divestment. Examples of transfers include:

Selling an asset for fair market value (not divestment).

Giving an asset away (divestment).

Transfers by Representatives

Treat transfers by any of the following as transfers by the client or spouse.

Parent for minor.

Legal guardian.

Conservator.

Court or administrative body.

Anyone acting in place of, on behalf of, at the request of or at the direction of the client or the client's spouse.

LOOK-BACK PERIOD

The first step in determining the period of time that transfers can be looked at for divestment is determining the **baseline date**; see Baseline Date in this item.

Once the baseline date is established, you determine the look-back period. The look back period is 60 months prior to the baseline date for all transfers made after February 8, 2006.

Entire Period

Transfers that occur **on** or **after** a client's baseline date must be considered for divestment. In addition, transfers that occurred within the 60 month look-back period must be considered for divestment.

SOLELY FOR THE BENEFIT OF

All of the following conditions must be met for a transfer or for a trust to be solely for the benefit of a person.

The arrangement must be in writing and legally binding on the parties.

The arrangement must ensure that none of the resources can be used for someone else during the person's lifetime, except for trustee fees.

The arrangement must require that the resources be spent for the person on an actuarially sound basis. This means that spending must be at a rate that will use up all the resources during the person's lifetime. Life expectancies are in Exhibit I - FEMALE OR EXHIBIT II- MALE.

During this hearing Gary testified that his mother wanted the purchases made and that initially some of the items were in his mother's home but they were moved out to his home in preparation for sale of the home. The purchases do not meet the requirements cited above to be solely for the benefit of Petitioner. The purchases do meet the criteria of being a divestment.

The four purchases (\$ [REDACTED] + \$ [REDACTED] + \$ [REDACTED] + \$ [REDACTED] = \$ [REDACTED] total \$ [REDACTED] BEM 405 at pages 12-14 provides the formula for calculating a penalty period. Applying that formula results in a 19.26 day penalty period. The February 16, 2016 Health Care Coverage Determination Notice (DHS-1606) issued by the Department stated there was a 23 day penalty being applied.

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 denied Petitioner's January 19, 2016 application for Medical Assistance (MA) [REDACTED] [REDACTED] (LTC) benefits.

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 a divestment penalty period of February 1-23, 2016.

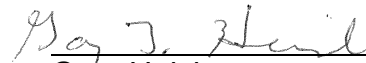
DECISION AND ORDER

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. Reinstate Petitioner's January 19, 2016 application for Medical Assistance (MA) [REDACTED] (LTC) benefits and process it in accordance with Department policy. If Petitioner is found not eligible beginning January 1, 2016, reinstate Petitioner's February 1, 2016 application for Medical Assistance (MA) [REDACTED] [REDACTED] (LTC) benefits and process it in accordance with Department policy.

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]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]