



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: May 16, 2016  
MAHS Docket No.: 16-003791  
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 20, 2016, from Lansing, Michigan. Petitioner was represented by Attorney [REDACTED]. Petitioner's sons, [REDACTED] and [REDACTED] appear to testify. The Department was represented by Assistant Attorney General [REDACTED]. Long Term Care (LTC) worker [REDACTED] appeared to testify for the Department. Department's Exhibit A, pages 1-60 was admitted into evidence.

### **ISSUE**

Did the Department properly determine a divestment amount and penalty for Petitioner on February 3, 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 November 30, 2015, an LTC Medical Assistance (MA) application was filed for Petitioner.
2. On February 3, 2016, a Health Care Coverage Determination Notice (DHS-1606) was issued for the November 30, 2015 application. The notice provided that a divestment had been determined by the Department in the amount of \$ [REDACTED] and a divestment penalty would be applied to Petitioner's benefits from September 1, 2015 until November 12, 2015.

3. On March 3, 2016, a hearing request was filed asserting that the divestment had been miscalculated.
4. On April 18, 2016, the Department issued an addendum to their Hearing Summary which a divestment amount that is different than the amount in the February 3, 2016 Health Care Coverage Determination Notice (DHHS-1606).

### **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 issued a specific eligibility determination in the Health Care Coverage Determination Notice (DHS-1606) of February 3, 2016. The hearing request disputed that specific eligibility determination. The Department then issued what they describe as an addendum to the hearing summary. That addendum states that the divestment amount given in the Health Care Coverage Determination Notice (DHS-1606) of February 3, 2016 is incorrect and should be larger. Bridges Administration Manual (BAM) 600 Hearings, at page 1 provides:

#### **DEPARTMENT POLICY**

##### **All Programs**

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever they believe the decision is incorrect. The department provides an administrative hearing to review the decision and determine its appropriateness in accordance to policy. This item includes procedures to meet the minimum requirements for a fair hearing.

#### **NOTICE REQUIREMENTS**

##### **All Programs**

The application forms and each written notice of case action must inform clients of their right to a hearing. These include an explanation of how and where to file a

hearing request, and the right to be assisted by and represented by anyone the client chooses.

The client must receive a written notice of all case actions affecting eligibility or amount of benefits. When a case action is completed it must specify:

The action being taken by the department.

The reason(s) for the action.

The **specific manual item(s)** that cites the legal base for an action, or the regulation, or law itself; see Bridges Administrative Manual (BAM) 220.

Part 10 of The Department of Licensing and Regulatory Affairs Michigan Administrative Hearing System Administrative Hearing Rules governs the conduct of this hearing on a Department of Health and Human Services eligibility determination. That authority contains no provisions with regard to changes of a Department eligibility determination following submission of a hearing request.

When the Department changes an eligibility determination following submission of a hearing request BAM 600 requires that notice be issued. If proper notice of the new eligibility determination is issued and completely supersedes the notice that fomented the hearing request, the hearing request may be dismissed and the Petitioner has the opportunity to request a hearing about the new, specific eligibility determination.

In this case the amended Hearing Summary which seeks to change the divestment amount is not proper notice in accordance with BAM 600. The amended Hearing Summary is direct evidence, proffered by the Department, that the divestment amount in the Health Care Coverage Determination Notice (DHS-1606) of February 3, 2016 is incorrect.

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 amount and penalty for Petitioner on February 3, 2016.

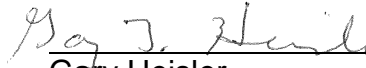
### **DECISION AND ORDER**

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. Re-determine Petitioner's LTC Medical Assistance (MA) eligibility to include issuing proper notice in accordance with BAM 600.

GH/nr

  
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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

**Counsel for Respondent**



**DHHS**





[REDACTED]

[REDACTED]

[REDACTED]

**Petitioner**

[REDACTED]

**Counsel for Petitioner**

[REDACTED]