



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 26, 2016
MAHS Docket No.: 16-010949

[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 September 8, 2016, from Lansing, Michigan. The Petitioner was represented by her sister [REDACTED]. Petitioner was not present. [REDACTED], and Petitioner's niece, [REDACTED] personally appeared and testified. [REDACTED] submitted an exhibit which was admitted into evidence.

The Department of Health and Human Services (Department) was represented by Long Term Care Specialist [REDACTED]. Department Exhibits 1-51 were submitted and admitted into evidence. The record was closed at the completion of the hearing.

ISSUE

Whether the Department properly imposed a divestment penalty from April 1, 2016 through July 2, 2017, based on the transfer of property?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner resides in a long-term care facility.
2. [REDACTED], Petitioner's sister, was granted durable power of attorney "POA" to act on behalf of Petitioner.

3. On February 26, 2016, Petitioner applied for Medicaid. (Dept. Ex. B, pp 1-5).
4. On November 10, 2015 Petitioner quit claimed her home for no value. The deed stated "This is a bonafide gift and grantor received nothing in return." [Dept. Exh. 14, 26].
5. On May 4, 2016, the Department received information that the property was sold for [REDACTED] on October 14, 2015. [Dept. Exh. 17].
6. On June 14, 2016, the Department issued Petitioner a Benefit Notice informing Petitioner that she was approved for Medicaid, but would have to serve a divestment penalty period from April 1, 2016 through July 2, 2017. (Dept. Exh. 48).
7. On August 1, 2016, the Department received Petitioner's timely written request for hearing. (Dept. Ex. 49).

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).

Divestment results in a penalty period in Medicaid, not ineligibility. BEM 405. During the penalty period, Medicaid will not pay for long-term care services. *Id.* **Divestment means a transfer of a resource by a client (or spouse) that is within the look-back period and is transferred for less than fair market value ("FMV").** *Id.* (Emphasis added). Transferring a resource means giving up all or partial ownership in, or rights to, a resource. *Id.* Resource means all the client's (and spouse's) assets and income. *Id.*; 20 CFR 416.1201. Less than FMV means the compensation received in return for a resource was worth less than the FMV of the resource. BEM 405. **When a person gives up the right to receive income, the FMV is the total amount of income the person could have expected to receive.** *Id.* (Emphasis added).

The first step in determining the period of time that transfers can be looked at for divestment is to determine the baseline date. BEM 405. The baseline date (applicable in this case) is the date which the client was a Medicaid applicant and in a long-term care facility. *Id.* After the baseline date is established, the look-back period is established. BEM 405. The look-back period is 60 months for all transfers made after February 8, 2006. *Id.* Transfers made by anyone acting in place of, on behalf of, at the request of, or at the direction of the client/spouse during the look-back period are considered. *Id.*

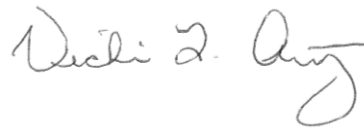
Petitioner applied for Medicaid on February 26, 2016. The look-back period in this case is February 26, 2011 through February 26, 2016. This was uncontested.

Petitioner credibly argued that the proceeds of the sale of Petitioner's home were supposed to go toward Petitioner's long-term care. However, the relative that sold the home and received the proceeds did not put them toward Petitioner's care. And the fact remains that Petitioner deeded her home during the look-back period without receiving fair market value during the look-back period. As indicated on the record, the remedy for the sale proceeds going towards Petitioner's long-term-care is not within this Administrative Law Judge's jurisdiction.

Therefore, the Administrative Law Judge, after a careful review of the record evidence and based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department acted in accordance with Department policy when it determined that a divestment occurred.

DECISION AND ORDER

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



Vicki Armstrong
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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]