



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: November 15, 2016
MAHS Docket No.: 16-012233

[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 October 13, 2016, from Lansing, Michigan. The Petitioner was represented by his wife, [REDACTED] and his Attorney, [REDACTED]. The Department of Health and Human Services (Department) was represented by Assistant Attorney General, [REDACTED], [REDACTED], Assistance Payments Supervisor, and [REDACTED] Eligibility Specialist.

ISSUE

Did the Department properly determine the Petitioner's eligibility for MA?

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 June 28, 2016, the Petitioner applied for MA.
2. On August 16, 2016, the Department determined that the Petitioner was eligible for MA, but there was a divestment penalty from July 1, 2016 through December 13, 2016, that occurred on May 29, 2015, when the [REDACTED] was put in an irrevocable trust. Department Exhibit 1, pgs. 7-10.

3. On August 16, 2016, the Department sent the Petitioner a notice that he was eligible for MA, but he would have to serve a divestment penalty from July 1, 2016 through December 13, 2016 before MA would cover his long term care. Department Exhibit 1, pgs. 11-18.
4. On August 25, 2016, the Department received a hearing request from the Petitioner's Attorney, contesting the Department's negative action.

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 Petitioner applied for MA on June 28, 2016. On August 16, 2016, the Department determined that the Petitioner was eligible for MA, but there was a divestment penalty from July 1, 2016 through December 13, 2016, that occurred on May 29, 2015, when the [REDACTED] was put in an irrevocable trust. Department Exhibit 1, pgs. 7-10. On August 16, 2016, the Department sent the Petitioner a notice that he was eligible for MA, but he would have to serve a divestment penalty from July 1, 2016 through December 13, 2016 before MA would cover his long term care. Department Exhibit 1, pgs. 11-18. On August 25, 2016, the Department received a hearing request from the Petitioner's Attorney, contesting the Department's negative action. BEM 400 and 405. ERM 205

During the hearing, the Petitioner's Attorney argued that the Department had counted the Petitioner's IRA trust account twice. Based on the information provided in the hearing packet and the testimony provided during the hearing, this Administrative Law Judge could not ascertain where the Department numbers came from. As a result, the Department has not met their burden and needs to redetermine MA eligibility.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it

determined that divestment had occurred and that the Petitioner had a 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, within 10 days of the date of mailing of this decision and order of initiating a redetermination of the Petitioner's eligibility for MA retroactive to his MA application dated June 28, 2016.



Carmen G. Fahie

Carmen G. Fahie

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

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