



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]

Date Mailed: December 1, 2016
MAHS Docket No.: 16-015939

[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 November 23, 2016, from Lansing, Michigan. The Petitioner was represented by his daughter and Authorized Representative [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED] Hearing Facilitator and [REDACTED] ES. Department Exhibit 1, pp.1-25 was received and admitted. Petitioner's Exhibit A, pp.1-2 was received and admitted.

ISSUE

Did the Department properly determine that divestment occurred and imposed divestment penalty?

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 6, 2016, Petitioner applied for Medicaid.
2. On June 26, 2016, the Department issued a Health Care Coverage Determination Notice finding that divestment occurred in the amount of [REDACTED] and imposed a divestment penalty period from June 1, 2016, through July 9, 2016.
3. On October 21, 2016, Petitioner requested hearing contesting the divestment determination and imposition of divestment penalty period.

4. Petitioner sold ■ properties for fair market value during the look back period

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.

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.
- Is not listed below under TRANSFERS THAT ARE NOT DIVESTMENT BEM 405 (April 2016)

LESS THAN FAIR MARKET VALUE

Less than fair market value means the compensation received in return for a resource was worth less than the fair market value of the resource. That is, the amount received for the resource was less than what would have been received if the resource was offered in the open market and in an arm's length transaction. BEM 405 (April 2016)

In this case, Petitioner Authorized Representative credibly testified that all the properties sold within the look back period were sold at arm's length to unrelated buyers. Petitioner's Authorized Representative explained that these were vacant parcels that

had little value to anyone other than the adjacent land owners. Petitioner's Authorized Representative also explained that the parcels were sold on short notice. Department policy has a guideline to use double to State Equalized Value to estimate fair market value. The only true way to measure fair market value is to offer property for sale and see what the market will bear. Petitioner offered these parcels for sale and the sale price on the open market after an arm's length negotiation was the fair market value. Therefore divestment did not occur in this case. BEM 405

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 did not act in accordance with Department policy when it determined that divestment occurred and imposed 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:

1. Delete the divestment penalty
2. Award Medicaid coverage going back to the date of application if Petitioner is found otherwise eligible.



Aaron McClintic

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]

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