



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: April 11, 2017
MAHS Docket No.: 16-015627
Agency No.: [REDACTED]
Petitioner: [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 [REDACTED], from [REDACTED], Michigan. Petitioner was represented by Attorney, [REDACTED].

The Department of Health and Human Services (Department) was represented by Assistant Attorney General, [REDACTED], and Executive Secretary, [REDACTED]. [REDACTED] testified on behalf of the Department. The Department submitted three exhibits which were admitted into evidence. The record was kept open until [REDACTED], when Petitioner submitted four exhibits which were admitted into evidence and the record was closed.

ISSUE

Whether the Department properly imposed a divestment penalty from [REDACTED], through [REDACTED], based on the transfer of property?

FINDINGS OF FACT

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

1. On [REDACTED], through a Quit Claim Deed, Petitioner received a [REDACTED] % interest in the property at [REDACTED]. [Dept. Exh. A 22-23].

2. On [REDACTED], Petitioner applied for Medicaid long-term-care benefits. [Dept. Exh. A 22].
3. At the time of the application, Petitioner's property at [REDACTED], was a real property asset and was categorized by the Department as a Homestead Exemption. [Dept. Exh. A 22].
4. On [REDACTED], the Department issued a Verification Checklist to Petitioner requesting proof of the mortgage or deed for the property by [REDACTED]. [Dept. Exh. A 19-20].
5. On [REDACTED], Petitioner emailed the Department informing them that the Verification Checklist was received, but since the deed had not changed from the time of the last application, Petitioner was unsure what the Department was requesting. [Dept. Exh. A 18].
6. On [REDACTED], a Quit Claim Deed was filed and Petitioner's name was removed from the deed and replaced with Petitioner's daughter-in-law, "[REDACTED], as Owner. [Dept. Exh. A 14-15].
7. On [REDACTED], the Department discovered that Petitioner's name had been removed from the deed to her homestead. The Department inquired of Petitioner in an email as to why Petitioner's name was removed from the deed. The response was that since both the Department and the Circuit Court ruled that the [REDACTED] % interest that was given to Petitioner had no value, taking Petitioner off the home should not have made a difference. [Dept. Exh. A 13-14].
8. On [REDACTED], the Department issued Petitioner a Health Care Coverage Determination Notice indicating that Petitioner was approved for Medicaid from [REDACTED], ongoing with a monthly patient pay amount of \$ [REDACTED]. The Notice also indicated that Medicaid would not cover the long-term-care waiver as a result of the divestment penalty, due to transferring the asset that was used for the Homestead Exemption to [REDACTED] in [REDACTED]. [Dept. Exh. A 9-12].
9. The divestment penalty was a result of Petitioner being removed from the deed to her property. The penalty was calculated by multiplying the property's State Equalized Value (SEV) by 2 and then by [REDACTED] %. $\$ [REDACTED] \times 2 \times [REDACTED] = \$ [REDACTED]$. This amount was then divided by the long term care cost during the baseline date of divestment. $\$ [REDACTED]$ divided by $\$ [REDACTED]$ equaled [REDACTED] months and [REDACTED] days. The penalty was scheduled to begin [REDACTED], through [REDACTED]. [Hearing Summary, Dept. Exh. A 14, 16-17].
10. On [REDACTED], Petitioner notified the Department that the deed had been reversed and Petitioner received her [REDACTED] % ownership back to the property. [Dept. Exh. A 7-8].

11. On [REDACTED], Petitioner submitted a timely written request for hearing to the Department. [Dept. Exh. A 2-3].
12. On [REDACTED], the Department issued Petitioner a Benefit Notice indicating Petitioner was still eligible for Medicaid beginning September 22, 2016, with a patient pay amount of \$ [REDACTED] a month. The Notice further explained that Medicaid would not pay for her long-term-care from [REDACTED], through [REDACTED], because she had given away assets for less than their value. [Dept. Exh. A 5].
13. [REDACTED] credibly testified during the hearing, in the above captioned case, that the removal of Petitioner's name from the deed to her homestead without compensation was a transfer for less than fair market value (FMV).

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.

Divestment results in a penalty period in MA, not ineligibility. BEM 405, p 1 (4/1/2016). During the penalty period, MA 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.* 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, p 6. 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. *Id.*

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, p 6. The baseline date (applicable in this case) is the date which the client was an MA applicant and in a long-term care facility. *Id.* After the baseline date is established, the look-back period is established. BEM 405, p 5. 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.* Transfers that occur on or after a client's baseline date must be considered for divestment. *Id.*

In this case, Petitioner applied for MA long term care benefits on [REDACTED]. At the time of application, Petitioner had a [REDACTED]% interest in her home in Pickford, Michigan. The Department categorized Petitioner's home as meeting the Homestead Exemption. On [REDACTED], Petitioner's daughter-in-law filed a Quit Claim Deed removing Petitioner's name from the property in [REDACTED], and replaced Petitioner's name with her own. Petitioner's daughter-in-law did not notify the Department of the removal of Petitioner's name from the deed to the property.

While completing the yearly review of Petitioner's MA benefits, the Department discovered Petitioner's name was no longer on the deed. On further investigation, the Department found that Petitioner received less than FMV for the transfer of property. That is, the amount received for the property 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, p 6. Therefore, Petitioner did transfer a resource, her home, to her daughter-in-law for less than fair market value, specifically she received nothing in return and as a result this transfer of property was a gift.

Additionally, this was not a transaction between two unrelated parties. The transactions were between Petitioner and Petitioner's daughter-in-law. As a result, this was not an arm's length transaction.

On [REDACTED], the Department issued a notice informing Petitioner of the divestment penalty. The divestment penalty was a result of Petitioner being removed from the deed to her property. The penalty was calculated by multiplying the property's SEV by 2 times [REDACTED]%. $\$ [REDACTED] \times 2 \times [REDACTED] = \$ [REDACTED]$. This amount was then divided by the long term care cost during the baseline date of divestment. $\$ [REDACTED]$ divided by $\$ [REDACTED]$ equaled [REDACTED] months and [REDACTED] days. The penalty was scheduled to begin [REDACTED], through [REDACTED]. During the hearing in the above captioned case, the calculation of the divestment penalty was not questioned.

The Department will cancel a divestment penalty if either of the following occurs before the penalty is in effect: all the transferred resources are returned and retained by the individual or fair market value is paid for the resources. BEM 405, p 16. The Department will then recalculate the penalty period if either of the following occurs while the penalty is in effect: (1) all the transferred resources are returned; or (2) full compensation is paid for the resources. *Id.*

On [REDACTED], Petitioner notified the Department that the deed had been reversed and Petitioner was once again a [REDACTED]% owner of the property in [REDACTED], Michigan. Since Petitioner was placed back on the deed, the Department issued Petitioner a Benefit Notice indicating Petitioner was still eligible for Medicaid beginning [REDACTED], with a patient pay amount of $\$ [REDACTED]$ a month. The Notice

further explained that Medicaid would not pay for Petitioner's long-term-care from [REDACTED] through [REDACTED], because she had given away assets for less than their value.

Petitioner contends that her [REDACTED] % interest in the property had no value. This Administrative Law Judge finds the argument unpersuasive. The value of the property was twice the State Equalized Value (SEV), as testified to by the Department during the hearing in the above captioned case. Petitioner did not dispute the SEV of the property in [REDACTED]. Petitioner contended that in a previous case the property was found to have no value. That case is not before this Administrative Law Judge.

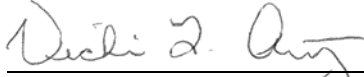
Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Based on the above Findings of Fact and Conclusions of Law, the Administrative Law Judge 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**.

VLA/bb



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

DHHS

[REDACTED]

Counsel for Respondent

[REDACTED]

Petitioner

[REDACTED]

Counsel for Petitioner

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