



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 9, 2017
MAHS Docket No.: 17-002947
Agency No.: [REDACTED]
Petitioner: [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 April 12, 2017, from Lansing, Michigan. The Petitioner was represented by his Authorized Representative, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED]. Department Exhibit 1, pp.1-16.

ISSUE

Did the Department properly determine that divestment occurred and imposed a 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 December 29, 2016, Petitioner applied for Long Term Care Medicaid.
2. On February 8, 2017, the Department determined that Petitioner divested \$ [REDACTED] and imposed a 4 day divestment penalty period.
3. Petitioner paid his daughter, [REDACTED] \$ [REDACTED] in October 2014 after he sold his van as reimbursement for monies she paid towards the original purchase of the van.

4. On February 23, 2017, Petitioner requested hearing contesting the divestment determination.

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)

Transfers for Another Purpose

As explained below, transfers exclusively for a purpose other than to qualify or remain eligible for MA are **not** divestment.

Assume transfers for less than fair market value were for eligibility purposes until the client or spouse provides convincing evidence that they had no reason to believe LTC or waiver services might be needed. BEM 405

In this case, Petitioner paid his daughter \$ [REDACTED] in October 2014 after he sold his van as reimbursement for monies she paid towards the original purchase of the van. Petitioner's daughter and Authorized Representative, [REDACTED] [REDACTED] credibly testified at hearing regarding the nature of the payment. In October 2014, Petitioner was

in good health and would not require nursing home care for several years. The payment was not made for the purpose of qualifying for Medicaid and was therefore not divestment. BEM 405. It should also be noted that Petitioner was asset eligible before he made the transfer in October 2014.

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 divestment penalty period.

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 determination and divestment penalty
2. Award Petitioner MA-LTC if he is otherwise eligible going back to the date of application.

AM/mc



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

DHHS

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Petitioner

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Authorized Hearing Rep.

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