



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: May 24, 2017
MAHS Docket No.: 17-003773
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, telephone hearing was held on April 27, 2017, from Lansing, Michigan. Petitioner was represented by his son [REDACTED] and [REDACTED], funeral home director, testified on Petitioner's behalf. The Department was represented by [REDACTED] hearing facilitator.

ISSUE

Did the Department of Health and Human Services (Department) properly determined that a divestment penalty should apply towards Petitioner's Long Term Care (LTC) benefits?

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 September 12, 2016, the Department received Petitioner's application for Medical Assistance (MA) requesting Long Term Care (LTC) benefits. Exhibit A, pp 12-20.
2. Petitioner reported on his application that In November of 2015, he had used his assets to purchase six funeral contracts for his three children and their spouses, costing \$ [REDACTED] Exhibit A, pp 21-46.
3. On January 24, 2017, the Department notified Petitioner that he was approved for Medical Assistance (MA) benefits but that a divestment penalty would apply

from September 1, 2016, through April 7, 2017, against Long Term Care (LTC) benefits. Exhibit A, pp 55-59.

4. On March 13, 2017, the Department received Petitioner's request for a hearing protesting the divestment penalty. Exhibit A, pp 1-2.

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. Divestment is a type of transfer of a resource and not an amount of resources transferred. Divestment means a transfer of a resource by a client or his spouse that are all of the following:

- Is within a specified time, which is 60 months prior to placement in a LTC facility.
- Is a transfer for less than fair market value.
- Is not listed below under transfers that are not divestment.

Department of Health and Human Services Bridges Eligibility Manual (BEM) 405 (April 1, 2016), pp 1-6.

Placing money in an irrevocable prepaid funeral contract is not divestment. BEM 405, p 10.

A prepaid funeral contract(s) must be certified irrevocable, provided all of the requirements below are met:

- The contract purchaser requests via DHS-8A that the contract be certified irrevocable.
- The contract purchaser is:
 - The beneficiary, and

- Alive, and
 - A FIP/SDA/MA/SSI applicant or recipient.
- DHHS has a copy of the contract.
 - The principal value(s) is not over the Allowable Principal Value (\$12,380).
 - Sections I and II of the DHS-8A are properly completed.
 - Ten or more business days have passed since all parties signed the contract. The purchaser may cancel the contract during this period.

Department of Health and Human Services Bridges Administrative Manual (BAM) 805 (June 1, 2016), pp 1-6.

In this case, the Department received Petitioner's application for MA and LTC benefits. Petitioner provided the Department with verification that a portion of his case assets were applied towards the purchase of six funeral contracts in November of 2015. These contracts were purchased on behalf of Petitioner's three children and their spouses. The Department determined that this transfer of countable assets was a divestment made within 60 months of Petitioner's placement in long term care. The Department determined that a divestment penalty would apply from September 1, 2016, when Petitioner became eligible for MA, through April 7, 2017.

Petitioner's representative did not dispute the Department's determination of the value of the assets that were transferred or the determination of the length of the penalty. Petitioner's representative disputes that the transfer was a divestment.

While a transfer used to purchase an irrevocable prepaid contract is defined under BEM 405 as a transfer that is not divestment transfer, such a transfer must meet all the requirements of irrevocable funeral contracts. For a prepaid funeral contract to be certified irrevocable, the contract purchaser must be the beneficiary as required by BAM 805.

In this case, Petitioner transferred his countable assets to pre-pay the funeral expenses of his children and he is not the beneficiary of those contracts. Therefore, the funeral contracts cannot be considered certified irrevocable and therefore the value of the transfer is not excluded from divestment.

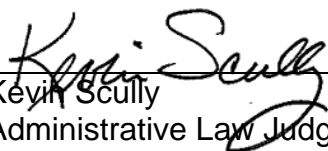
Furthermore, these contracts cannot be considered a funeral expense and therefore an excluded asset. The Department will exclude up to \$ [REDACTED] for each qualified fiscal group member and/or spouse. Department of Health and Human Services Bridges Eligibility Manual (BEM) 400 (July 1, 2016), p 47. Petitioner's children are not part of his benefit group. If the purchase of the six funeral contracts was found to not be a transfer but a payment of funeral expenses, the value of such a burial fund far exceeds the limit allowed by policy and Petitioner would be ineligible for MA benefits based on excess assets.

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 was acting in accordance with policy when it determined that the transfer of Petitioner's assets in November of 2015, was a divestment resulting in a divestment penalty from September 1, 2016, through April 7, 2017.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/nr



Kevin Scully
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]

Petitioner

[REDACTED]

Authorized Hearing Rep.

[REDACTED]