



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: [REDACTED] July 18, 2017
MAHS Docket No.: 17-004887
Agency No.: [REDACTED]
Petitioner: [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; 42 CFR 438.400 to 438.424; 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 Petitioner's daughter and Authorized Representative, [REDACTED], who has durable power of attorney; and [REDACTED], Authorized Representative from the [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Long Term Eligibility Specialist.

ISSUE

Did the Department properly determine that Petitioner was eligible for Medical Assistance (MA) with 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 [REDACTED], Petitioner applied for MA. Department Exhibit 1, pgs. 3-7.
2. On [REDACTED], the Department Caseworker asked for policy clarification for the burial spaces purchased for Petitioner's children and their spouses where Petitioner spent \$ [REDACTED] for prepaid funeral contracts, but did not retain ownership rights. Department Exhibit 1, pgs. 24-30.

3. On [REDACTED], the Department Caseworker received clarification from the Long Term Care Support Policy Unit in Central Office that stated that Petitioner had to own the burial space and it had to be held for a qualified family member. If Petitioner used their money, but they do not own it, then it is divestment. A review of the existing contracts does not show that Petitioner was the owner. Department Exhibit 1, pgs. 24-30.
4. On [REDACTED], the Department Caseworker sent Petitioner a Health Care Coverage Determination Notice, DHS 1606, that Petitioner is eligible for MA from [REDACTED], ongoing for full coverage. However, Petitioner had been given a divestment penalty of \$ [REDACTED], for the burial spaces that were purchased for his children and their spouses, because they are not owned by Petitioner or his wife, which violates the HELD FOR criteria. Department Exhibit 1, pgs. 34-41.
5. On [REDACTED], the Department received a hearing request from Petitioner, contesting the Department's negative action.
6. On [REDACTED], new funeral contracts were submitted for Petitioner's children and their spouses on behalf of Petitioner that showed Petitioner as retaining ownership of the plots that were signed on [REDACTED]. Department Exhibit 1, pgs. 42-53.

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, Petitioner applied for MA on [REDACTED]. Department Exhibit 1, pgs. 3-7. On [REDACTED], the Department Caseworker asked for policy clarification for the burial spaces purchased for Petitioner's children and their spouses where Petitioner spent \$ [REDACTED] for prepaid funeral contracts, but did not retain ownership rights. Department Exhibit 1, pgs. 24-30. On [REDACTED], the Department Caseworker received clarification from the Long Term Care Support Policy Unit in Central Office that stated that Petitioner had to own the burial space and it had to be held for a qualified family member. If Petitioner used their money, but they do not own

it, then it is divestment. A review of the existing contracts does not show that Petitioner show Petitioner as the owner. Department Exhibit 1, pgs. 24-30.

On [REDACTED], the Department Caseworker sent Petitioner a Health Care Coverage Determination Notice, DHS 1606, that Petitioner is eligible for MA from [REDACTED], ongoing for full coverage. However, Petitioner had been given a divestment penalty of \$[REDACTED] for the burial spaces that were purchased for his children and their spouses because they are not owned by Petitioner or his wife, which violates the HELD FOR criteria. Department Exhibit 1, pgs. 34-41. On [REDACTED] 17, the Department received a hearing request from Petitioner, contesting the Department's negative action. On [REDACTED], new funeral contracts were submitted for Petitioner's children and their spouses on behalf of Petitioner that showed Petitioner as retaining ownership of the plots that were signed on [REDACTED]. Department Exhibit 1, pgs. 42-53. BEM 400 and 405.

BEM 400, PAGES 47-52

FUNERAL PLANS

SSI-Related MA Only

Funeral plan refers to the prearrangement for cemetery and/or funeral goods and services. Normally, the plan is established using one or more of the following:

- Burial fund.
- Purchase of burial space.
- Prepaid funeral contract.
- Life insurance funding.

Burial Fund Exclusion

SSI-Related MA Only

A limited amount of certain types of assets a person has clearly designated to pay for burial expenses is excluded as a burial fund. See below for information about:

- Types of assets.
- Burial expenses.
- Clearly designated.
- Not commingled.
- Amount excluded.
- Misuse of funds.

See Exhibit I of this item for examples of this exclusion.

Types of Assets

Assets under the following headings in this item can be a burial fund:

- Cash.
- Investments.
- Life insurance.
- Prepaid funeral contract.

Other types of assets (example: real property, vehicles, livestock) may **not** be a burial fund.

Burial Expenses

Expenses that qualify for the burial fund exclusion are generally those related to preparing a body for burial and any services prior to burial. Examples are:

- Services of funeral director and staff.
- Transportation of the body.
- Embalming.
- Cremation.
- Clothing.
- Cost of guest registry book.
- Cost of obituary.
- Flowers **not** displayed at gravesite.
- Cleric's honorarium if no services at gravesite.
- Burial space items that do **not** meet the held for test described in **SSI-Related MA Burial Space Exclusion** in this item.

Note: Luncheons or similar services do not meet the definition of a burial fund expense as it is not related to the preparation of the body for burial. Do not certify a DHS-8A with such an expense and do not consider it as an allowable burial fund expense item.

Clearly Designated

The asset must be clearly designated. The designation can be on the asset (example: title on a bank account, prepaid funeral contract) or on a signed statement from the client. The designation must include the following information:

- Value and owner of the asset.
- Whose burial the fund is for.

- Date the funds were set aside for the person's burial.
- Form in which the asset is held (example: bank account, life insurance).

Not Commingled

Burial funds may **not** be commingled with any assets except excluded burial space assets; see **SSI-Related MA Burial Space Exclusion** in this item.

Amount Excluded

Exclude up to \$1,500 for each qualified fiscal group member and/or spouse. In addition, exclude accumulated interest and dividends.

Reduce the \$1,500 per person maximum by the following:

- The face value of excluded life insurance policies (including term insurance) when the person is the insured and:
 - If an adult, the policy is owned by the person or the person's spouse.
 - If a child, the policy is owned by the child, the child's parent or the parent's spouse.
- The principal amount (**not** accumulated interest or dividends) held in an irrevocable prepaid funeral contract for the person's burial expenses (see above). Do **not** count the identifiable cost of burial space assets; see **Burial Space Defined** in this item.
- The cost of burial expenses (see above) identifiable in a life insurance funded funeral plan that was irrevocably transferred (see **Life Insurance Funded Funeral and Life Insurance Irrevocably Transferred** in this item).
- The face value of burial insurance on the person. See **Life Insurance** in this item for the definition of burial insurance.

Count only the original principal amount and any additions to the principal to determine if the maximum limit has been reached. Do **not** count accumulated interest and dividends.

Note: The principal amount of a life insurance policy is the cash surrender value (CSV) of the policy, **not** the face value. Increases in the CSV count against the limit. Increases in the CSV above the person's burial fund limit are countable as the policy owner's assets.

Burial Space Defined

SSI-Related MA Only

A **burial space** is a(n):

- Burial plot, gravesite.
- Crypt, mausoleum.
- Casket, urn, niche.
- Some other type of repository customarily and traditionally used for the deceased's bodily remains.
- **Necessary** and **reasonable** improvements or additions to or upon such spaces including:
 - Vaults.
 - Headstones, markers or plaques.
 - Burial containers.
 - Opening and closing of the gravesite.
 - Contracts for care and maintenance of the gravesite.

Note: Reasonable and **necessary** are those items required by the cemetery.

- Flowers if displayed at gravesite.
- Cleric's honorarium for service at gravesite.

Note: Of the items that serve the same purpose, exclude only one item per person.

Example: Exclude a cemetery lot and casket for the same person, but not a casket and an urn.

Value of Burial Space

SSI-Related MA Only

The value of a burial space item is its equity value. Equity value is fair market value minus the amount legally owed in a written lien provision.

SSI-Related MA Burial Space Exclusion

SSI-Related MA Only

Exclude **one** burial space **held for** (see below) each of the following:

- Each qualified fiscal group member.
- Whether by blood, adoption or marriage, the member's:
 - Parents.
 - Minor and adult children.
 - Siblings.
- The spouse of each person listed above.

For a member's relatives only by marriage, apply the exclusion only if the marriage has **not** ended by death or divorce.

Burial space items in a prepaid funeral contract must be identified and valued separately from non-burial space items to be excluded.

If the contract shows the purchase of a specified burial space at a specified price, determine whether such space is **held for** the client or member of the client's immediate family. If the space is held for the individual, determine if the contract is irrevocable or revocable. If irrevocable, it is not a resource. If the contract is revocable, it is an excludable resource. The burial space must continue to meet the **held for** criteria to be excluded. If a space is transferred to another individual (even if listed above) it no longer meets the **held for** criteria and needs to be evaluated for divestment.

Held For. A burial space is held for an individual when someone currently has:

- Title to and/or possesses a burial space intended for the individual's use (example: has title to a burial plot, owns a burial urn stored in the basement for his own use).

- A contract with a funeral service company for specified burial spaces for the individual's burial (that is, an agreement that represents the individual's current right to the use of the items at the amount shown).

A burial space does not meet the definition of **held for** an individual under an installment sales contract or similar device if the purchase price is not paid in full and any of the following are true:

- The individual does **not** currently own the space.
- The individual does **not** currently have the right to use the space.
- The seller is **not** currently obligated to provide the space.

Until all payments are made on the contract, the amounts paid might be considered burial funds; see **Burial Fund Exclusion** in this item.

Prepaid Funeral Contract

SSI-Related MA Only

A prepaid funeral contract means a contract requiring payment in advance for funeral goods or services. Contracts may be revocable or irrevocable.

- See **Revocable Prepaid Funeral Contract Exclusions and Value** below if the contract is revocable.
- See **Irrevocable Prepaid Funeral Contracts** below if the contract is irrevocable.
- See BAM 805, PREPAID FUNERAL CONTRACTS, about making Michigan contracts irrevocable.

Revocable Prepaid Funeral Contract Exclusions and Value

SSI-Related MA Only

Funds in a revocable prepaid funeral contract might be excludable using the **Burial Fund Exclusion** and/or the **SSI-Related MA Burial Space Exclusion** above.

The countable amount of the contract is the amount remaining on deposit after deducting those exclusions and

any commissions or fees that would be charged upon withdrawal. There is no burial funds exclusion.

Irrevocable Prepaid Funeral Contracts

G2U, G2C, RMA, SSI-Related MA Only

Funds in an **irrevocable** prepaid funeral contract are unavailable and thus are **not** counted.

Funds in a Michigan contract (DHS-8A, Irrevocable Funeral Contract Certification) certified irrevocable are excluded.

During the hearing, the Department Caseworker stated at the time of application on [REDACTED], that Petitioner did not own the burial plots purchased on [REDACTED], but his money had been used to purchase them. Department Exhibit 1, pgs. 12-23. As a result, the Department calculated a \$ [REDACTED] divestment penalty for 9 months and 7 days since Petitioner's money had been used, but he hadn't retained ownership of the burial plots in violation of the HELD FOR exclusion. Department Exhibit 1, pgs. 9-11.

Subsequently, there were new contracts submitted on [REDACTED], for Petitioner's children and their spouses on behalf of Petitioner that showed Petitioner as retaining ownership of the plots, but the signature date of [REDACTED], remained on the contracts. Department Exhibit 1, pgs. 42-53. Petitioner's Authorized Representative and Representative of the Funeral Home stated that the wrong contracts were submitted on [REDACTED], to the Department that the subsequent contracts submitted on [REDACTED], were the correct contracts. Department Exhibit 1, pgs. 12-23, and 42-53.

This Administrative Law Judges finds that the Department made the correct determination on [REDACTED], based on the information provided to determine MA eligibility. In the interim, no one called the Department to say that the wrong contracts were submitted even after the notice was sent out on [REDACTED]. The hearing requests received by the Department on [REDACTED], did not state that the wrong contracts were submitted in error, but it contested the divestment penalty.

A resource can be returned to Petitioner before the penalty is served or in this case have the funeral contracts transferred to Petitioner as the owner with the HELD FOR his children and their spouses in keeping with Department policy. However, the contracts cannot have the same date as previously submitted. If Petitioner became aware of the reason for the divestment penalty on [REDACTED], and the original contract were signed on [REDACTED]. The corrected contracts cannot have the same date as the original contract to be valid. In addition, there is no verification submitted that Petitioner's children and their spouses gave the asset back to Petitioner then he purchased the funeral contracts and retained the ownership right required by Department policy. Therefore, this Administrative Law Judge finds that the subsequent

contracts submitted on [REDACTED] where produced for Petitioner to qualify for MA without the divestment penalty and the Department's divestment penalty stands.

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 acted in accordance with Department policy when it calculated a \$ [REDACTED] divestment penalty for 9 months and 7 days since Petitioner's money had been used, but he hadn't retained ownership of the burial plots in violation of the HELD FOR exclusion for the burial plots for his children and their spouses.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

CF/bb



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

DHHS

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]