



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: August 25, 2017
MAHS Docket No.: 17-007029
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 July 11, 2017, from Lansing, Michigan. Petitioner was represented by daughter and Durable Power of Attorney, [REDACTED], her attorney, [REDACTED], and [REDACTED] from [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payment Worker, Assistant Attorney General, [REDACTED], and Assistant Attorney General, [REDACTED].

ISSUE

Did the Department properly determine the divestment penalty for Petitioner's long term care Medicaid (MA) case?

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 22, 2016, Petitioner applied for MA for long term care with supporting documentation. Department Exhibit 1, pgs. 7-107.
2. On February 6, 2017, Petitioner's attorney submitted additional documentation in support of her December 22, 2016, MA application and subsequent Verification Checklist. Department Exhibit 1, pgs. 108-286.

3. On March 2, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice, DHS 1606, which listed her baseline dates were from July 1, 2012, through January 11, 2020. She was eligible for full coverage from December 1, 2016, ongoing, but that MA would not pay for her long term care and community based waiver services from December 1, 2016, through January 11, 2020, because assets or income were transferred for less than fair market value. Department Exhibit 1, pgs. 289-291.
4. On March 15, 2017, the Department sent Petitioner a Quick Note, DHS 100, stating that a correction to the Health Care Coverage Determination Notice, DHS 1606, sent March 2, 2017, where her baseline was listed as December 1, 2016. Department Exhibit 1, pgs. 293.
5. On May 15, 2017, the Department received a hearing request from Petitioner, contesting the Department's negative action.

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 for long term care with supporting documentation on December 22, 2016. Department Exhibit 1, pgs. 7-107. On February 6, 2017, Petitioner's attorney submitted additional documentation in support of her December 22, 2016, MA application and subsequent Verification Checklist. Department Exhibit 1, pgs. 108-286. On March 2, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice, DHS 1606, which listed her baseline dates were from July 1, 2012, through January 11, 2020. She was eligible for full coverage from December 1, 2016, ongoing, but that MA would not pay for her long term care and community based waiver services from December 1, 2016, through January 11, 2020, because assets or income were transferred for less than fair market value. Department Exhibit 1, pgs. 289-291. On March 15, 2017, the Department sent Petitioner a Quick Note, DHS 100, stating that a correction to the Health Care Coverage Determination Notice, DHS 1606, sent March 2, 2017 where her baseline was listed as December 1, 2016. Department

Exhibit 1, pgs. 293. On May 15, 2017, the Department received a hearing request from Petitioner, contesting the Department's negative action. BEM 405.

During the hearing, both parties agreed that the amount of \$ [REDACTED] was not in dispute. However, what is in contention is that the amount was spent for less than fair market value and resulted in a divestment penalty of December 1, 2016, through January 11, 2020, for the Petitioner.

BEM 405, pgs. 7-8; effective April 1, 2016

Personal Care & Home Care Contracts

Personal Care Contract means a contract/agreement that provides health care monitoring, medical treatment, securing hospitalization, visitation, entertainment, travel/transportation, financial management, shopping, home help or other assistance with activities of daily living.

Home Care Contract means a contract/agreement which pays for expenses such as home/cottage/care repairs, property maintenance, property taxes, homeowner's insurance, heat and utilities for the homestead or other real property of the client's Home Care and Personal Care contracts/agreements may be between relatives or non-relatives. A relative is anyone related to the client by blood, marriage or adoption.

Note: When relatives provide assistance or services they are presumed to do so for love and affection and compensation for past assistance or services shall create a rebuttable presumption of a transfer for less than fair market value. Fair market value of the services may be determined by consultation with area businesses which provide such services. Contracts/agreements that include the provision of companionship are prohibited.

All Personal Care and Home Care contracts/agreements, regardless of whether between a client and a relative or a client and a non-relative, must be considered and evaluated for divestment.

Personal Care and Home Care contracts/agreements shall be considered a transfer for less than fair market value unless the agreement meets all of the following:

- The services must be performed after a written legal contract/agreement has been executed between the client and the provider. The contract/agreement must be dated and the signatures must be notarized. The services are not paid for until the services have been provided (there can be no prospective payment for future expenses or services); and
- At the time the services are received, the client cannot be residing in a nursing facility, adult foster care home (licensed or unlicensed), institution for mental diseases, inpatient hospital, intermediate care facility for individuals with intellectual disabilities or be eligible for home and community based waiver, home health or home help; and
- At the time services are received, the services must have been recommended in writing and signed by the client's physician as necessary to prevent the transfer of the client to a residential care or nursing facility. Such services cannot include the provision of companionship; and
- The contract/agreement must be signed by the client or legally authorized representative, such as an agent under a power of attorney, guardian, or conservator. If the agreement is signed by a representative, that representative cannot be the provider or beneficiary of the contract/agreement.
- MDHHS will verify the contract/agreement by reviewing the written instrument between the client and the provider which must show the type, frequency and duration of such services being provided to the client and the amount of consideration (money or property) being received by the provider, or in accordance with a service plan approved by MDHHS.

Assets transferred in exchange for a contract/agreement for personal services/assistance or expenses of real property/homestead provided by another person after the date of application are considered available and countable assets.

BEM 405, pg. 11; effective April 1, 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.

Example: Mr. Smith, age 40, was in good health when he gave his vacation cottage to his nephew. The next day Mr. Smith was in an automobile accident. His injuries require long-term care. The transfer was not divestment because Mr. Smith could not anticipate his need for LTC services.

Exception:

- Preservation of an estate for heirs or to avoid probate court is not acceptable as another purpose.
- That the asset or income is not counted for Medicaid does not make its transfer for another purpose.

Petitioner is an 87 year old woman who suffers from dementia. [REDACTED] was a caregiver service that was hired to provide caregiver services in July 2012. Petitioner's Attorney argues that when the caregiver service was hired they did not expect Petitioner would need MA. The sole purpose of paying for a private caregiver services was to manage Petitioner's care in her home, which would allow her to age in place at home and remain in the community and outside of a skilled nursing facility. There was no contract or written agreement between Petitioner and [REDACTED]. [REDACTED] billed weekly based on an hourly rate agreed to by the family of how many hours were required from 5 hours to 12 hours when she required additional time per day at a rate of \$ [REDACTED] to \$ [REDACTED] per hour. The caregiver services were provided until Petitioner moved to an adult foster home in July 2016. The Assistant Attorney General argues that Department policy requires a notarized contract between Petitioner and caregiver service and a doctor's note at the time stating that the care services provided were medically required.

First of all, this Administrative Law Judge finds that the policy that governs is the policy that was in place when the application was filed on December 22, 2016, giving this court jurisdiction, not the time period of policy of the 5 year look-back period of December 2012. The current policy that gives this Administrative Law Judge the jurisdiction to hear this case was issued on April 1, 2016. Department policy requires a signed, written contract that is dated and notarized with the personal care giver and Petitioner. In addition, the personal care services must be recommended by Petitioner's treating physician as medically necessary to keep Petitioner in the home at that time. At 82 years of age with dementia, the Petitioner would reasonably decline as the disease progressed and require MA.

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 determined that divestment had occurred and that Petitioner is not eligible for MA from December 1, 2016, through January 11, 2020.

DECISION AND ORDER

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

Carmen G. Fahie

CF/md

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

Counsel for Respondent

[REDACTED]

DHHS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]

Counsel for Petitioner

[REDACTED]