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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: September 8, 2017
MAHS Docket No.: 17-007453
Agency No.: [REDACTED]
Petitioner: [REDACTED]

[REDACTED]

MAHS Docket No.: 17-007459
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

HEARING DECISION

Following Petitioners' 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 August 10, 2017, from [REDACTED] Michigan. Petitioners were represented by their son and Power of Attorney [REDACTED]. [REDACTED] also appeared and testified for Petitioners. The Department of Health and Human Services (Department) was represented by [REDACTED], Long Term Care Eligibility Specialist. Department Exhibit 1, pp. 1-109 was received and admitted. Petitioner Exhibit A, pp. 1- 40 was received and admitted.

ISSUE

Did the Department properly determine that divestment occurred that required a divestment penalty period?

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 March 31, 2017, Petitioners applied for Medicaid.
2. On May 22, 2017, Petitioners' applications for Medicaid were approved with a divestment penalty in the amount of \$ [REDACTED]

3. A divestment penalty period of 2 months 29 days for both Petitioners was imposed for the time period from March 1, 2017, through May 29, 2017.
4. Petitioner [REDACTED] purchased Funeral Contracts for the benefit of his adult children and retained ownership interest. (Petitioner Ex. A
5. Petitioner [REDACTED] purchased revocable [REDACTED] for his adult children. (Petitioner Ex. A
6. On June 2, 2017, Petitioner requested hearing contesting the determination of divestment penalty and imposition of divestment penalty period.

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)

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. BEM 400 (April 2016)

In this case, there were two sets of transactions that the Department determined to be divestment, the purchase of burial contracts for Petitioners' adult children and the purchase of funeral life insurance contracts for Petitioners' adult children. Petitioners submitted documentation on April 5, 2017, for the purchase of burial contracts for his adult children. The paperwork submitted by Petitioners reflects that burial contracts originally were titled in the adult children's names but were altered to include [REDACTED] name as the owner, [REDACTED] name was handwritten after the children's names were crossed off. [REDACTED] from [REDACTED] [REDACTED] credibly testified at hearing that the error of titling the policies in the names of the adult children was caught before the policies were submitted and processed and

presented the corrected policies that reflect that [REDACTED] was the owner with his adult children as the beneficiaries. (Petitioner Ex. A)

The second set of transactions were for revocable life insurance contracts for Petitioners' adult children. Petitioners submitted documentation of April 5, 2017, that reflected that these policies were irrevocably assigned to the funeral home. [REDACTED] from [REDACTED] credibly testified that the error of setting up the policies as irrevocable was caught before they were submitted and processed by the insurance company [REDACTED]. Petitioners submitted a letter from [REDACTED] dated July 20, 2017, that states the following: "Attached you will find coverage letters for each policy requested, they show current value of policy, showing the cash and loan value. They also show that these are not Irrevocable. We never received the paperwork from [REDACTED] to process them as Irrevocable. If they were made Irrevocable we would not have been able to change that status on them." (Petitioner Ex. A, p.1)

Both sets of transactions met the criteria in BEM 400 to be deemed not divestment.

The Department acknowledged at hearing that the two sets of transactions would not be divestment if they were executed in the manner described by [REDACTED] at hearing. [REDACTED] testimony at hearing regarding how the transactions were executed was credible and supported by the documents that he presented at hearing. Therefore, divestment did not occur and the Department's finding of divestment and imposition of divestment penalty was improper and incorrect. BEM 405 It should be noted that the documentation submitted by the Petitioners on April 5, 2017, reflected that the transactions were made in a manner that was divestment, so it was understandable that the Department initially determined that divestment had occurred.

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.

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. Erase the divestment finding and lift the divestment penalty from Petitioners' cases.
2. Award Petitioners Medicaid benefits if they are otherwise eligible.

AM/md



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

[REDACTED]

Petitioner

[REDACTED]

Authorized Hearing Rep.

[REDACTED]