



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: September 14, 2017
MAHS Docket No.: 17-007541
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 August 9, 2017, from Lansing, Michigan. Petitioner was represented by [REDACTED], Legal Guardian, and Attorney, [REDACTED] from [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator, [REDACTED] Eligibility Specialist, and Assistant Attorney General [REDACTED]

ISSUE

Did the Department properly determine Petitioner's eligibility for Medicaid (MA)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was a recipient of MA since 2013 with her enrollment in long term care MI Choice Waiver program.
2. Petitioner owned a home that was an exempt asset with a state equalized value of \$ [REDACTED] with her daughter, [REDACTED], as joint tenants with full rights of survivorship dated February 12, 1997, through a quit claim deed. Department Exhibit 1, pg.7 and 9.

3. On September 27, 2016, the Petitioner's daughter, who had power of attorney, [REDACTED], transferred the ownership of Petitioner's house to herself. Department Exhibit 1, pg.8.
4. On January 27, 2017, the transfer of the home was reported to the Department with redetermination verifications. Department Exhibit 1, pg. 6.
5. On March 29, 2017, the Department determined that divestment had occurred with a begin date of May 1, 2017. Department Exhibit 1, pg. 6.
6. The Petitioner was placed in long term care in a nursing home on April 5, 2017. Department Exhibit 1, pg. 6.
7. On April 14, 2017, the Department Caseworker sent Petitioner a Health Care Coverage Determination Notice, DHS 1606, that stated that MA would not pay for her long-term care and home/community based services from May 1, 2017, through November 20, 2019, due to assets being transferred for less than fair market value. Department Exhibit 1, pgs. 10-12.
8. On May 24, 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 was a recipient of MA since 2013 with her enrollment in long term care MI Choice Waiver program. Petitioner owned a home that was an exempt asset with a state equalized value of \$ [REDACTED] with her daughter, [REDACTED] as joint tenants with full rights of survivorship dated February 12, 1997, through a quit claim deed. Department Exhibit 1, pg. 7 and 9. On September 27, 2016, the Petitioner's daughter, who had power of attorney, [REDACTED], transferred the ownership of Petitioner's house to herself. Department Exhibit 1, pg.8.

On January 27, 2017, the transfer of the home was reported to the Department with redetermination verifications. Department Exhibit 1, pg. 6. On March 29, 2017, the Department determined that divestment had occurred with a begin date of May 1, 2017. Department Exhibit 1, pg. 6. The Petitioner was placed in long term care in a nursing home on April 5, 2017. Department Exhibit 1, pg. 6. On April 14, 2017, the Department Caseworker sent Petitioner a Health Care Coverage Determination Notice, DHS 1606, that stated that MA would not pay for her long-term care and home/community based services from May 1, 2017, through November 20, 2019, due to assets being transferred for less than fair market value. Department Exhibit 1, pgs. 10-12. On May 24, 2017, the Department received a hearing request from Petitioner, contesting the Department's negative action. BEM 405, 500, 503, 540, and 554. BAM 130 and 220.

BEM 405, pgs. 10-11

Transferring Homestead to Family

It is **not** divestment to transfer a homestead to the client's:

- Spouse; see Transfers Involving Spouse above.
- Blind or disabled child; see Transfers Involving Child above.
- Child under age 21.
- Child age 21 or over who:
 - Lived in the homestead for at least two years immediately before the client's admission to LTC or BEM 106 waiver approval, **and**
 - Provided care that would otherwise have required LTC or BEM 106 waiver services, as documented by a physician's (M.D. or D.O.) statement.

This Administrative Law Judge finds that this is divestment. Petitioner started receiving MA since 2013 with her enrollment in long term care MI Choice Waiver program. On September 23, 2016, the Petitioner's daughter, [REDACTED], transferred the homestead to her name only. Since this transfer of the homestead occurred three years after Petitioner was enrollment in long term care MI Choice Waiver program, this is divestment.

In addition, this Administrative Law Judge finds that divestment had occurred when Petitioner's name was removed from the homestead on September 27, 2016. Petitioner had a joint tenancy with her daughter, [REDACTED], with rights of survivorship, which means that whoever died first between the two of them, the other would inherit the property in full. As a result, the Department correctly counted the full value of the property at \$[REDACTED]. Although Petitioner's Attorney argues that fraud was committed on Petitioner, there was no verification submitted that any attempts had been made to recover the property back from the daughter, [REDACTED]. As a result, divestment had occurred because the transfer of the property was for less than fair market value.

BEM 405, pg. 16

UNDUE HARDSHIP

Waive the penalty if it creates undue hardship. Assume there is no undue hardship unless you have evidence to the contrary.

Undue hardship exists when the client's physician (M.D. or D.O.) says:

- Necessary medical care is **not** being provided, and
- The client needs treatment for an emergency condition.

A medical emergency exists when a delay in treatment may result in the person's death or permanent impairment of the person's health.

A psychiatric emergency exists when immediate treatment is required to prevent serious injury to the person or others.

See BEM 100, Policy Exception Request Procedure.

Petitioner's Attorney final argument is that this would contribute an undue hardship for Petitioner to lose MA. However, it is the responsibility of Petitioner's Attorney, Guardian, and family to protect her assets. This Administrative Law Judge jurisdiction is limited by Department policy that clearly states that divestment has occurred. Department policy allows Petitioner to file for Policy Exception Request found in BEM 100.

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 properly determined that divestment had occurred when the Petitioner's homestead was transferred for less than fair market value resulting a divestment penalty from May 1, 2017, through November 20, 2019.

DECISION AND ORDER

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



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

DHHS

[REDACTED]

Counsel for Respondent

[REDACTED]

Counsel for Respondent

[REDACTED]

Petitioner

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

Counsel for Petitioner

[REDACTED]