



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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Date Mailed: December 10, 2018
MAHS Docket No.: 18-011038
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 administrative hearing was held on December 5, 2018, with the Administrative Law Judge (ALJ) appearing from Lansing, Michigan, and all other parties appearing in person at the Escanaba Department of Health and Human Services (DHHS or Respondent). The Michigan Administrative Hearing System (MAHS) file is marked as a Marquette, Michigan file for unknown reason. Petitioner was represented by ██████████, daughter, and ██████████, authorized hearing representative. Petitioner has authorized both individuals to represent her at administrative hearings.

The Department of Health and Human Services (Department) was represented by Nicolas Kasbohm, ES worker, and Sherry Salo, General Services Program Manager.

ISSUE

Did the Department properly apply 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 ██████ 2018 Petitioner applied for Long Term Care (LTC) Medicaid.
2. On July 30, 2018, Respondent issued a determination notice stating that "Petitioner was approved effective 6/1/18 ongoing, with a divestment penalty applied #####." Testimony by Respondent was that the notice should have stated from 6/1/18 to 7/28/18.

3. Respondent denied on the grounds that four burial caskets were purchased, each at \$ [REDACTED] that were irrevocable.
4. Petitioner submitted documentation of revocable contracts dates May 15, 2018, along with four letters on behalf of each purchase from Pekin Insurance stating that each policy was assigned as revocable.
5. On October 19, 2018, Petitioner filed a hearing request.

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, applicable policy regarding assets and divestment are found in BEM 400 and 405. This policy states that if the purchase at issue herein is revocable, then it is not countable. If it is irrevocable, it is a countable asset.

Here, Respondent submitted evidence that the contracts were made effective May 15, 2018, and were revocable, thus not a countable resource/asset under BEM 400 and 405. Respondent also submitted the same revocable contracts in its proposed evidentiary packet for the administrative hearing prior to the hearing. However, on the day of the hearing, Respondent faxed the identical contracts with the same date except that were indicated to be irrevocable.

Petitioner indicated that there was some confusion about the execution of the documents, and they were corrected. In support, Petitioner submitted four December 3, 2018, letters from Pekin Insurance stating that each contract is revocable.

In response, the Department representative argued that he made a phone call and he [the Department representative] was told that they were irrevocable. However, the Department had no documentation of the 'phone call,' was not sure of the date, and no verification from the funeral home or from the insurance company to support its claim.

The job of an ALJ is to weigh the evidence of record and make a determination if the action taken by the agency is supported by a preponderance of the evidence of record. Here, Petitioner has the burden. Here, Petitioner submitted credible and substantial evidence of these contracts as being revocable. Petitioner also gave a credible explanation as to the existence of a second set of May 15, 2018, contracts. Respondent itself initially submitted the evidence which supports Petitioner's argument, but then submitted new documents on the morning of the hearing. In addition, Respondent wishes to claim that there was a phone conversation he had with the funeral home or the insurance company but had not documentation and little recall as to the dates and with whom he spoke. Under these facts and general evidentiary rules of evidence, Respondent's claims are hearsay, not admissible, and the ALJ must find that the evidence of record supports Petitioner's argument.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, finds that the Department did not act in accordance with Department policy when it applied a divestment penalty and thus, the action cannot stand and must be reversed.

DECISION AND ORDER

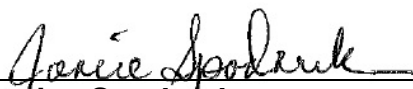
Accordingly, the Department's decision is **REVERSED**.

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. Remove the divestment penalty from its computer system for the time period from June 1, 2018, to July 28, 2018, and
2. Issue new notice to Petitioner informing that she is eligible for LTC Medicaid without a divestment policy from June 1, 2018, and ongoing, and
3. Issue any supplemental benefits to Petitioner to which she is entitled consistent with the decision and order.

IT IS SO ORDERED.

JS/hb



Janice Spodarek
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) 763-0155; 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

Joan King
305 Ludington St.
Escanaba, MI 49829

Delta County, DHHS

BSC1 via electronic mail

D. Smith via electronic mail

EQADHShearings via electronic mail

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED] MI [REDACTED]