



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

MIKE ZIMMER  
DIRECTOR

[REDACTED]

Date Mailed: March 23, 2016  
MAHS Docket No.: 15-022446  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton**

### **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; 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 March 14, 2016, from Detroit, Michigan. The Department was represented by [REDACTED] Hearing Facilitator. The Respondent was represented by [REDACTED] Authorized Hearing Representative (AHR) and her daughter, [REDACTED]

### **ISSUE**

Did the Department properly conclude that Petitioner divested assets and apply a divestment penalty to Petitioner's receipt of long-term care (LTC) benefits under the Medicaid (MA) program?

### **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 completed and submitted a Redetermination in November 2015.
2. Petitioner is currently in a long-term care facility.
3. After receiving the Redetermination, the Department determined that Petitioner sold her interest in her home for less than its fair market value.

4. The Department assessed a divestment penalty from [REDACTED].
5. On [REDACTED], Petitioner's AHR filed a Request for Hearing disputing the Department's actions.

### **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 Michigan, assistance with LTC costs is available under MA SSI-related categories for eligible individuals who have countable resources of \$2,000 or less and have not disposed of any assets for less than fair market value during the five years prior to application. BEM 105 (October 2014), p. 1; BEM 163 (July 2013), pp. 1-2; BEM 164 (October 2014), pp. 1-2; BEM 166 (July 2013), pp. 1-2. If a client is asset-eligible for MA, the Department reviews any transfer of assets made by the individual in the five-year period that the client was eligible for MA and either in LTC, approved for the waiver, eligible for Home Health services, or eligible for home help services. BEM 405 (October 2012), pp. 1-16. If the individual has divested assets, she may be eligible for MA but a divestment penalty will apply to the client's case during which time MA will not pay the client's expenses for LTC services but will pay for other MA-covered services. BEM 405, p. 1.

The Department asserted that a divestment occurred in this matter when Petitioner transferred her interest in her home for less than fair market value. Under Department policy, a divestment occurs when the client transfers a resource (i) within a specified time (the "look-back period"), (ii) for less than fair market value, and (iii) the transfer is not an excluded transfer. BEM 405, p. 1. The look-back period is a transfer within 60 months of the first date that the client was eligible for MA and one of the following: in LTC, approved for the waiver, eligible for Home Health services, or eligible for home help services. BEM 405, pp. 5-6. "Less than fair market value" means the compensation received in return for a resource was worth less than the fair market value of the resource. BEM 405, p. 5. In other words, the amount received for the resource was less than what would have been received if the resource was offered in

the open market and in an arm's length transaction. BEM 405, p. 5. Compensation must have tangible form and intrinsic value. BEM 405, p. 7. Giving an asset away is a transfer that results in a divestment. BEM 405, p. 2.

In this case, Petitioner's AHR argued that Petitioner had not quitclaimed the property located at [REDACTED] to anyone, and in fact still owns interest in the property. Petitioner's AHR provided documentation to show that Petitioner received her interest in the property through a quitclaim deed executed on [REDACTED] and recorded on [REDACTED]. Department policy allows for an exclusion of a homestead that an owner formerly lived in if **any** of the following are true:

- The owner intends to return to the homestead.
- The owner is in an LTC facility, a hospital, an adult foster care (AFC) home or a home for the aged.
- A co-owner of the homestead uses the property as his home. See BEM 400 (November 2012), p. 25.

The Department testified that it relied on the records of the [REDACTED] which contained an entry indicating that on [REDACTED], the property was transferred for \$1.00. The entry identified the Grantor as [REDACTED] et al, which led the Department to conclude that all interest in the property had been transferred to the listed grantee. Based upon this information, the Department concluded that a divestment had occurred. As a result of this conclusion, the Petitioner was placed in a penalty period from [REDACTED] through [REDACTED]. However, Petitioner's AHR provided documentation of the [REDACTED] quitclaim deed which revealed that Petitioner had not transferred her interest in the property.

The Department testified that it relied solely on the information it obtained from the [REDACTED] in reaching its conclusion. However, it is found that the [REDACTED] quitclaim deed sufficiently refuted the information obtained from the [REDACTED]. As such, it is found that Petitioner still holds her interest in the home in question.

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 applied a divestment penalty to Petitioner's receipt of LTC services.

### **DECISION AND ORDER**

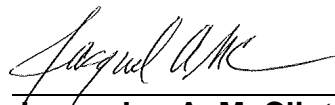
Accordingly, the Department's MA decision is **REVERSED**.

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 penalty relating to Petitioner's MA benefits;
2. Issue supplements to the LTC provider for any payments the LTC was entitled to receive but did not; and
3. Notify Petitioner of its decision.

JM/hw



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**Jacquelyn A. McClinton**

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]

[REDACTED]

**Petitioner**

[REDACTED]

**Counsel for Complainant**

[REDACTED]