



RICK SNYDER  
GOVERNOR

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

MIKE ZIMMER  
DIRECTOR

Date Mailed: March 11, 2016  
MAHS Docket No.: 16-000159  
Agency No.: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

### **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 9, 2016, from Detroit, Michigan. Petitioner did not appear for the hearing. Petitioner was represented by [REDACTED]. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist.

### **ISSUE**

The issue is whether MDHHS properly imposed a divestment penalty against Petitioner's Medical Assistance (MA) eligibility.

### **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 an ongoing MA benefit recipient.
2. On an unspecified date, Petitioner divested \$116,072.
3. The divestment baseline month was October 2011.
4. On an unspecified date, MDHHS imposed a 35 month penalty against Petitioner for the divestment.

5. On [REDACTED], Petitioner's attorney requested a hearing to dispute the duration of the divestment penalty.

### **CONCLUSIONS OF LAW**

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. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner's attorney requested a hearing to dispute a determination of Petitioner's MA eligibility. The determination concerned divestment.

Divestment is a type of transfer of a resource and not an amount of resources transferred. BEM 405 (July 2015), p. 1. Divestment means a transfer of a resource by a client or his spouse that are all of the following: is within a specified time..., is a transfer for less than fair market value..., and is not listed under TRANSFERS THAT ARE NOT DIVESTMENT. *Id.* During the penalty period, MA will not pay the client's cost for: LTC services, home and community based service, home help, [and] home health. *Id.*

Petitioner's attorney conceded that a divestment penalty was apt. Petitioner's attorney disputed the duration of the divestment penalty calculated by MDHHS. MDHHS imposed a 35 month divestment penalty against Petitioner.

The penalty period is computed on the total Uncompensated Value of all resources divested. *Id.*, p. 12. [MDHHS is to] determine the Uncompensated Value for each resource transferred and combine into a total Uncompensated Value. *Id.*

[MDHHS is to] divide the total Uncompensated Value by the average monthly private LTC Cost in Michigan for the client's Baseline Date. *Id.*, p. 13. This gives the number of full months for the penalty period. *Id.* [MDHHS is to] multiply the fraction remaining by 30 to determine the number of days for the penalty period in the remaining partial month. *Id.* [MDHHS is to] apply the total penalty months and days. *Id.* [MDHHS is to] apply a penalty even if the total amount of the penalty is for only a partial month. *Id.*

The total uncompensated value was not disputed to be \$116,072. The baseline date was not disputed to be October 2011. The average monthly private LTC cost as of Petitioner's baseline date was not disputed to be \$6,816. Dividing the total uncompensated value by the average LTC cost as of Petitioner's baseline date results in a monthly penalty of 17.03.

MDHHS did not provide evidence how a 35 month divestment penalty was calculated. MDHHS testimony conceded that 17.03 months was the proper divestment penalty. MDHHS testimony also indicated that a computer glitch prevented correction of the penalty, and that a help desk ticket was initiated to help resolve the dispute. It is found MDHHS improperly calculated Petitioner's divestment penalty.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's divestment penalty. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) remove the divestment penalty of 35 months; and
- (2) determine Petitioner's divestment penalty based on the following information:
  - a. total uncompensated value of \$116,702;
  - b. baseline date of October 2011; and
  - c. baseline date LTC cost of \$6,816/month.

The actions taken by MDHHS are **REVERSED**.

CG/hw



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**Christian Gardocki**  
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]