



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: June 15, 2016  
MAHS Docket No.: 16-004372  
Agency No.: [REDACTED]  
[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; 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 May 17, 2016, from Lansing, Michigan. The Petitioner was represented by [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], Paralegal. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist and [REDACTED].

**ISSUE**

Did the Department properly determine the divestment penalty for the Petitioner's long term care Medicaid (MA) case?

**FINDINGS OF FACT**

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

1. The Petitioner has dementia and entered the nursing home on February 24, 2015.
2. On November 30, 2015, the Petitioner applied for MA with retroactive MA to September 1, 2015. Department Exhibit 1, pgs. 86-93.
3. On February 18, 2016, the Department re-determined the Petitioner's eligibility for MA by reviewing the financial records for the look back period of 60 months and

determined that there was a [REDACTED] divestment. Department Exhibit 1, pgs. 41 and 94.

4. On March 9, 2016, the Department sent the Petitioner and her attorney a notice that the divestment period has been corrected with new dates of September 1, 2015 through December 22, 2015 based upon [REDACTED] divested with a 3 month and 22 day penalty period with a baseline date of September 1, 2015. Department Exhibit 1, pgs. 78-79.
5. On March 28, 2016, the Department received a hearing request from the 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, the Petitioner has dementia and entered the nursing home on February 24, 2015. The Petitioner applied for MA on November 30, 2015, with retroactive MA to September 1, 2015. Department Exhibit 1, pgs. 86-93. On February 18, 2016, the Department re-determined the Petitioner's eligibility for MA by reviewing the financial records for the look back period of 60 months and determined that there was a [REDACTED] divestment. Department Exhibit 1, pgs. 41 and 94. On March 9, 2016, the Department sent the Petitioner and her attorney a notice that the divestment period has been corrected with new dates of September 1, 2015 through December 22, 2015 based upon [REDACTED] divested with a 3 month and 22 day penalty period with a baseline date of September 1, 2015. Department Exhibit 1, pgs. 78-79. On March 28, 2016, the Department received a hearing request from the Petitioner, contesting the Department's negative action. BEM 405.

During the hearing, the Department and the Petitioner's Attorney presented arguments as to whether or not the Petitioner's assets were divested according to Department policy. The Department determined that [REDACTED] had been divested from the Petitioner's assets. Department Exhibit 1, pg. 41. This is Administrative Law Judge

finds that gifts to family of siding for a granddaughter and tires for Derek are divestment as stated in Department policy found in BEM 405.

The second issue of divestment was the three checks from 2011 that the bank could not produce a copy of what the money was spent on for [REDACTED], and [REDACTED] Department Exhibit 1, pgs. 51-53. The burden is on the Petitioner to prove that the funds were not divested and used properly according to Department's policy. If the Petitioner cannot meet that burden, then it is divestment.

The third issue of divestment was a car of a [REDACTED] purchased on March 30, 2015 after the Petitioner entered the nursing home on February 24, 2015. According to the Department, the car was valued for [REDACTED] less than the purchase price. This was argued to be an asset conversion because it was not for equal value. In addition, the Petitioner did not require a car because she was in a nursing home. The corresponding mileage also show that this car is not being used mainly for the Petitioner's transportation because of the total miles on the car compared to the number of visits of the Petitioner, the distance to the nursing home and her family's home was significantly exceeded by the mileage on the car. The Petitioner's nursing home is 3.7 miles from her family's home. The car since it has been bought has an additional 14,309 miles. In addition, the Petitioner was paying for the insurance for the car of [REDACTED]. The Petitioner's Attorney stated that the car was purchased to transport the Petitioner back and forth from the nursing home to visit her family in a car that the Petitioner could comfortably travel in. In addition, the car is titled and owned by the Petitioner. Department Exhibit 1, pgs. 27-31, 33-34, 36, and 39. This Administrative Law Judge notes that the Petitioner is paying for the total costs of the car and the car insurance even though she is transported in the car a limited amount of times and miles per month. She is picked up in the car from the nursing home not at all per month of 0 miles, to once per month of 3.7 miles, to a maximum of twice per month of 7.4 miles. This is divestment of the cost of the car and the car insurance. Although the Petitioner is allowed a car as an exempt asset, this car was bought after she entered the nursing home and it is not being used primarily for the benefit of the Petitioner.

The fourth issue is parcel of lots that were sold to the daughter with a promissory note dated September 22, 2015 for [REDACTED] that has not been paid to the Petitioner yet. The Department want to count it as divestment because the asset was transferred and the Petitioner has not been compensated. The Attorney argues that the daughter still had the obligation to pay that she just hasn't paid it yet. Department Exhibit 1, pgs. 23-25. However, this Administrative Law Judge notes that the first payment was due on October 1, 2015 of [REDACTED] and no payment has been made. This is divestment because the Petitioner has not received the value of what was entitled to by the promissory note.

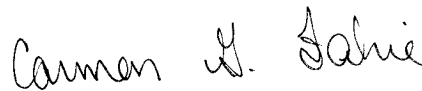
The fifth issue was the home repair costs that was allegedly because of damage caused by the Petitioner in the past 8 years. The Department argued that the Petitioner paid her daughter rent every month, which accounts for wear and tear. The Department stated that according to policy, "*when relatives provide assistance or services, they are*

*presumed to do so for love and affection and compensation for past assistance and services shall create a rebuttable presumption of a transfer for less than fair market value.* BEM 405, pg. 6. The Department did not count the rent paid by the Petitioner every month to her daughter as divestment, but argued that the rent on top of the home repair costs were divestment. The Attorney argued that the Petitioner lived with her daughter for 8 years resulting in significant damage to the Petitioner's daughter's home that she is entitled to have repaired and paid for by the Petitioner since she is now in a nursing home. Department Exhibit 1, pgs. 44-45. This Administrative Law Judge finds that after 8 years there will be some wear and tear that should have been covered by the rent paid by the Petitioner every month. The Petitioner should not have to pay rent and the costs of the repairs. After 8 years, the walls should be painted and carpets replaced as normal wear and tear as a maintenance costs of upkeep. This is divestment.

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 determined that there had been divestment of [REDACTED] resulting in a divestment penalty of 3 month and 22 day penalty period with a baseline date of September 1, 2015..

### **DECISION AND ORDER**

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



**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

[REDACTED]

[REDACTED]  
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