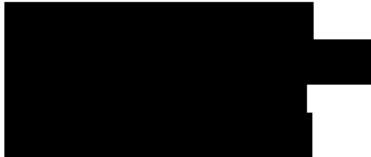




RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: July 14, 2016  
MAHS Docket No.: 16-006791  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: C. Adam Purnell**

**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 conference hearing was held on July 13, 2016, from Lansing, Michigan. The Petitioner was represented by her attorney, [REDACTED]. [REDACTED] (Petitioner's sister/guardian) appeared as a witness on behalf of the Petitioner. The Department of Health and Human Services (Department) was represented by Assistant Attorney General (AAG) [REDACTED] ([REDACTED] [REDACTED] (Long Term Care (LTC) Specialist) appeared as a witness for the Department. [REDACTED] (Eligibility Specialist) provided language interpretation.

**ISSUES**

Did the Department correctly determine Petitioner's divestment amount for purposes of the Medical Assistance (MA or "Medicaid") 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. On May 3, 2016, the Department mailed Petitioner a Health Care Coverage Determination Notice (DHS-1606), which determined that a divestment occurred beginning September 1, 2015 in the amount of \$ [REDACTED] and that the penalty period is from June 1, 2016 through September 12, 2016. [Department's Exhibit 1, pp. 99-100].

2. On May 13, 2016, the Department received a Request for Hearing from Petitioner's attorney which challenged the Department's determination that a divestment occurred. [Dept. Exh. 1, p. 2].
3. On May 24, 2016, the Department prepared a Hearing Summary (DHS-3050), along with a hearing packet, which, among other things, contained documentation to support that Petitioner had divested herself of assets in the amount of \$ [REDACTED] from the period of June 1, 2016 through September 12, 2016. [Dept. Exh. 1, p. 1].
4. On June 1, 2016, AAG [REDACTED] filed an Appearance on behalf of the Department.
5. On June 10, 2016, the Michigan Administrative Hearing System (MAHS) issued a Notice of Hearing which assigned the case to Administrative Law Judge Susanne Harris (ALJ Harris) and scheduled the hearing for June 22, 2016.
6. On June 17, 2016, the attorneys for both parties jointly requested that the June 22, 2016 hearing be adjourned.
7. On June 21, 2016, ALJ Harris issued an Adjournment Order, which adjourned the June 22, 2016 hearing.
8. On June 29, 2016, the MAHS issued a Notice of Hearing which reassigned the case to ALJ C. Adam Purnell and rescheduled the hearing for July 13, 2016.
9. The hearing commenced on July 13, 2016 as scheduled. The parties were represented by attorneys. Before any witness testimony was taken, the Department's attorney, AAG [REDACTED], conceded that the Department's calculation of the \$ [REDACTED] divestment penalty in this matter was incorrect. AAG [REDACTED] then requested the ALJ remand the matter back to the Department to recalculate the proper divestment amount. The ALJ discussed the matter on the record with both attorneys. After some consideration, Petitioner's attorney agreed with AAG [REDACTED] proposal. The record was closed at the conclusion of the hearing.

### **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.

A “divestment” is a transfer of assets that would create a penalty period. BEM 405 (4-1-2016), p. 1. The “penalty period” is a period of disqualification from Medicaid assistance for Long Term Care (LTC).<sup>1</sup> BEM 405, p. 1. In other words, the penalty period is the number of months of long term care that will not be covered by Medicaid. Divestment is a type of transfer of a resource and not an amount of resources transferred. BEM 405, p. 1. Divestment results in a penalty period in Medicaid, not ineligibility. BEM 405, p.1.

The penalty period is computed on the total Uncompensated Value of all resources divested. BEM 405, p. 12. The Department shall determine the Uncompensated Value for each resource transferred and combine into a total Uncompensated Value. BEM 405, p. 12. The uncompensated value of a divested resource is: (1) the resource’s cash or equity value; (2) minus any compensation received; or (3) the uncompensated value of a promissory note, loan or mortgage is the outstanding balance due on the “Baseline Date.” BEM 405, p 15.

In this case, Petitioner’s request for hearing in this matter was based on: (1) the Department’s determination of a divestment; and (2) the Department’s calculation of the divestment penalty amount. Petitioner challenged both the divestment itself and the calculation of the divestment amount. There was no dispute in this matter that the Department erred when it calculated the \$ [REDACTED] divestment amount. During the hearing, the Department’s attorney requested the ALJ provide the Department with an opportunity to recalculate Petitioner’s divestment amount and then forward Petitioner with written notification of the new divestment calculation. Petitioner’s attorney did not object to the proposal. Because the parties have mutually reached an agreement concerning the recalculation of the divestment amount, this issue is no longer a pending dispute for the Administrative Law Judge to decide. There is no need for the ALJ, at this time, to determine whether a divestment occurred. Once the Department redetermines Petitioner’s divestment amount, and forwards the decision to the Petitioner, she may submit a timely request a hearing to dispute the Department’s divestment decision. The instant decision does not bar Petitioner from bringing a request for hearing concerning the Department’s determination that a divestment occurred.

Therefore, this 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 determined Petitioner’s divestment amount was \$ [REDACTED]

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<sup>1</sup> LTC means being in any of the following: (1) a nursing home that provides nursing care; (2) a county medical care facility that provides nursing care; (3) a hospital long-term care unit; (4) a MDHHS facility that provides active psychiatric treatment; (5) a special MR nursing home; or (6) a MDHHS facility for individuals with intellectual disability that provides ICF/ID (Intermediate Care Facility for Individuals with Intellectual Disability) nursing care. A person may receive hospice care in one of these facilities. He [or she] is still considered in LTC. Bridges Program Glossary (BPG), pages 33, 39.

**DECISION AND ORDER**

Accordingly, the Department's decision concerning the divestment penalty amount 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. The Department shall initiate a redetermination of Petitioner's divestment penalty amount.
2. The Department shall provide Petitioner with written notification of its decision.

**IT IS SO ORDERED.**

CP/las



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**C. Adam Purnell**  
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

**Counsel for Respondent**

[REDACTED]

**DHHS**

[REDACTED]

[REDACTED]

**Petitioner**

[REDACTED]

**Counsel for Petitioner**

[REDACTED]