



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: May 27, 2016
MAHS Docket No.: 16-003974
Agency No.: [REDACTED]
Petitioner: [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 May 16, 2016, from Detroit, Michigan. Petitioner did not appear and was represented by an authorized hearing representative (AHR), [REDACTED] (Petitioner's son and guardian). The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist, and [REDACTED] manager.

ISSUE

The issue is whether MDHHS properly imposed a divestment penalty against Petitioner.

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 Medicaid recipient and resident of a long-term-care facility.
2. Petitioner was the owner of a life insurance policy with a cash surrender value of \$619.
3. On an unspecified date, the life insurance policy was transferred to someone else.

4. On [REDACTED], MDHHS imposed a 2-day divestment penalty on Petitioner, beginning [REDACTED], based on the transfer of Petitioner's life insurance policy (see Exhibit 1, pp. 1-3).
5. On an unspecified date, the insurance company revoked the transfer of Petitioner's life insurance policy.

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 guardian requested a hearing to dispute a 2-day divestment penalty imposed against his father. It was not disputed the divestment penalty was based on a transfer of a life insurance policy.

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.*

MDHHS presented a letter dated [REDACTED], from Petitioner's life insurance policy company. The letter verified a cash surrender value of \$619 for the life insurance policy.

Relative to many other alleged divestments, \$619 is a relatively small amount to divest; the resulting penalty was only 2 days. The alleged divestment was so small that MDHHS testimony conceded Petitioner would have been asset-eligible for Medicaid benefits had the transfer not occurred. Consideration was given to determining whether MDHHS could impose a divestment penalty when the transfer did not impact Medicaid eligibility. For purposes of this decision, it will be presumed that MDHHS can impose a divestment penalty in such a circumstance.

Petitioner's AHR testified the life insurance transfer was performed by a guardian, and not by Petitioner. MDHHS policy explicitly allows divestment penalties against clients for transfers made by a representative (see *Id.*, p. 3). Thus, it is of no relevance that Petitioner may have been unaware of the life insurance policy transfer.

Petitioner presented a letter from the life insurance company (Exhibit A, p. 1) dated May 10, 2015. The letter verified Petitioner to be the owner. Petitioner's AHR contended the return of the life insurance policy justified a change in divestment penalty.

Once a divestment penalty is in effect, return of, or payment for, resources cannot eliminate any portion of the penalty period already past. *Id.* p. 16. [MDHHS is to] cancel a divestment penalty if either of the following occurs before the penalty is in effect:

- All the transferred resources are returned and retained by the individual.
- Fair market value is paid for the resources.

Id.,

Had Petitioner's AHR verified the return of Petitioner's life insurance before the dates of the divestment penalty, then a continuing penalty would be improper. It was not disputed Petitioner's AHR verified the change in ownership after the divestment penalty dates. Thus, MDHHS cannot be faulted for not reversing the divestment penalty solely based on the life insurance policy value returning to Petitioner.

Petitioner's AHR testified that the life insurance policy was technically not returned. Petitioner's AHR testified that the original transfer was performed without proper authorization and subsequently invalidated.

Petitioner's AHR presented a letter form the insurance company (Exhibit B, p. 1) dated

life insurance policy value. The letter stated, "... we have determined the ownership change... naming you... submitted in October 2015... was invalid. We have been made aware of a guardianship that was in place prior to October 2015. Please destroy the endorsement... naming you as owner. The document is now void. Your request to cancel this policy... will not be honored since you are not the Owner." The presented letter verified Petitioner's testimony that the transfer justifying the divestment penalty was invalid.

Neither MDHHS policy nor case law was presented for the present case's circumstances. It is somewhat tempting to affirm the divestment penalty because it cannot be stated that MDHHS took any improper actions. As of the divestment penalty dates, MDHHS had no compelling reason to reverse their actions. Ultimately, it is more compelling that Petitioner not be penalized for a transfer committed by an unauthorized representative, which was later verified to have been revoked.

It is found that MDHHS may not impose a divestment penalty which was later found to be unauthorized. Accordingly, MDHHS will be ordered to reverse the divestment penalty.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that the divestment penalty against Petitioner was improper. It is ordered that

MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine the divestment penalty subject to the finding that there was no transfer of life insurance because the original transfer was improper and revoked; and
- (2) Issue any benefits improperly not issued.

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

CG/hw



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]

Petitioner

[REDACTED]

Authorized Hearing Rep.

[REDACTED]