



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: December 1, 2016
MAHS Docket No.: 16-012570

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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, an in person hearing was held on November 2, 2016, from [REDACTED]. The Petitioner was represented by her attorney [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED] Eligibility Specialist and [REDACTED] testified for the Department. [REDACTED], Petitioner's daughter, and [REDACTED], Petitioner's son in law and power of attorney testified for the Petitioner. Department Exhibit 1, pp.1-683 was received and admitted without objection.

ISSUE

Did the Department properly determine that divestment occurred and impose divestment penalty?

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 April 27, 2016, Petitioner through her power of attorney [REDACTED] applied for Long Term Care Medicaid.
2. On June 12, 2016, Notice of Case Action was issued by the Department determining that divestment occurred in the amount of [REDACTED] and imposed a divestment penalty period from April 1, 2016, through May 5, 2018. (Dept. Ex.1, p.4)

3. On August 24, 2016, Petitioner requested hearing contesting the finding of divestment and imposition of divestment penalty period.
4. At all relevant times, Petitioner was asset eligible for Medicaid.
5. Petitioner owned a [REDACTED] account during the look back period that had a low monthly balance of below [REDACTED] during the entire look back period.
6. Petitioner's children had access to her [REDACTED] account and were able to make deposits and withdrawals.

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.

DEPARTMENT POLICY

Medicaid (MA) ONLY

Divestment results in a penalty period in MA, **not** ineligibility. Divestment policy does **not** apply to Qualified Disabled Working Individuals (QDWI); see Bridges Eligibility Manual 169.

Divestment is a type of transfer of a resource and not an amount of resources transferred.

Divestment means a transfer of a resource (see RESOURCE DEFINED below and in glossary) by a client or his spouse that are all of the following:

- ☐ Is within a specified time; see LOOK-BACK PERIOD in this item.
- ☐ Is a transfer for LESS THAN FAIR MARKET VALUE; see definition in glossary.
- ☐ Is not listed below under TRANSFERS THAT ARE NOT DIVESTMENT BEM 405 (April 2016)

Transfers for Another Purpose

As explained below, transfers exclusively for a purpose other than to qualify or remain eligible for MA are **not** divestment.

Assume transfers for less than fair market value were for eligibility purposes until the client or spouse provides convincing evidence that they had no reason to believe LTC or waiver services might be needed. BEM 405 (April 2016)

In this case, Petitioner had a [REDACTED] account that was in her name that she used as her primary bank account. Petitioner's social security and pension income was deposited in this account. Other family members, including her daughter [REDACTED], had access to this account and would deposit monies into the account if the account was overdrawn. At all times during the look back period, the monthly low balance for the [REDACTED] account was below the MA asset limit. Petitioner did not divest monies from this account because she did not need to, she was asset eligible during the entire look back period. Petitioner's withdrawals exceeded her income during the time period in question. Petitioner made no direct transfers of her income out of the [REDACTED] account to other individuals during the look back period and certainly made no transfers for the purpose of qualifying for Medicaid. The deposits into the [REDACTED] account by family members were primarily to cover overdrafts by Petitioner. Family members were given access to the account as a matter of convenience and not as an effort to gain eligibility for Petitioner. In fact, according to the credible testimony of Petitioner's daughter [REDACTED], considerable efforts were made to keep Petitioner out of a nursing home and placing her in a nursing home only took place after her health declined rapidly. Divestment did not occur and no divestment penalty should have been imposed. BEM 405

The Department asserted that Petitioner needed to account for all the monies deposited and withdrawn from her [REDACTED] account during the look back period and make an assessment whether divestment occurred based on how the monies in the account were used and where the monies went because other family members had access to the account and made deposits during the look back period. The Department could not point to any specific provision in BEM 405 that requires this type of assessment to be made based on these circumstances. The Department conceded at hearing that there were no indications that there were any transfers for less than fair market value. The Department presented no proof that any transfers Petitioner made, or anyone else made out of the [REDACTED] account, were made for the purpose to qualify for MA.

DECISION AND ORDER

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 determined that divestment occurred and imposed divestment penalty.

Accordingly, the Department's 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. Erase the divestment finding and lift the divestment penalty from Petitioner's case.
2. Award Petitioner Medicaid benefits if she is otherwise eligible.



Aaron McClintic

Aaron McClintic
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]

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