



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: [REDACTED] July 21, 2017
MAHS Docket No.: 17-005647
Agency No.: [REDACTED]
Petitioner: [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; 42 CFR 438.400 to 438.424; 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 [REDACTED] 7, from [REDACTED]. Petitioner was represented by her son and authorized representative, [REDACTED]; and [REDACTED], business office manager at [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Worker (APW).

ISSUE

Did the Department properly determine the divestment penalty for 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. On [REDACTED], the Petitioner applied for MA for nursing home care. Department Exhibit 1, pgs. 1-12.
2. On [REDACTED], Petitioner's son provided a copy of the quit claim deed showing that the home was transferred to the son as a joint owner with Petitioner. Department Exhibit 1, pgs. 17-20.

3. On [REDACTED], the Department received the facility admission notice for Petitioner of a date of admission of [REDACTED]. Department Exhibit 1, pg. 21.
4. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice, DHS 1606, that she was eligible for MA for the month of [REDACTED], with a \$[REDACTED] patient pay, and [REDACTED]-ongoing with a \$[REDACTED] monthly patient pay. However, the Department stated that Petitioner had a divestment penalty from [REDACTED], through [REDACTED], because assets were transferred for less than fair market value. Department Exhibit 1, pgs. 36-39.
5. On [REDACTED], the Department sent out a Verification Checklist, DHS 3503, requesting a copy of the complete deed and verification that Petitioner's son is disabled. Department Exhibit 1, pg. 45.
6. Petitioner's son has no results on the Social Security State On-line Query (SOLQ) system so he is not disabled. Department Exhibit 1, pg. 46.
7. On [REDACTED], the Department sent the Petitioner a Health Care Coverage Determination Notice, DHS 1606, that she was not eligible for the Medicare Cost Sharing program, because she had full MA coverage from [REDACTED]-ongoing. Department Exhibit 1, pgs. 47-49.
8. On [REDACTED], the Department received a hearing request from Petitioner's son, 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, Petitioner applied for MA for nursing home care on [REDACTED]. Department Exhibit 1, pgs. 1-12. On [REDACTED], Petitioner's son provided a copy of the quit claim deed showing that the home was transferred to the son as a joint owner with Petitioner. Department Exhibit 1, pgs. 17-20. On [REDACTED], the

Department received the facility admission notice for Petitioner of a date of admission of [REDACTED]. Department Exhibit 1, pg. 21.

On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice, DHS 1606, that she was eligible for MA for the month of [REDACTED], with a \$ [REDACTED] patient pay, and [REDACTED]-ongoing with a \$2,011.00 monthly patient pay. However, the Department stated that Petitioner had a divestment penalty from [REDACTED], through [REDACTED], because assets were transferred for less than fair market value. Department Exhibit 1, pgs. 36-39. On [REDACTED], the Department sent out a Verification Checklist, DHS 3503, requesting a copy of the complete deed and verification that Petitioner's son is disabled. Department Exhibit 1, pg. 45.

Petitioner's son has no results on the Social Security SOLQ system so he is not disabled. Department Exhibit 1, pg. 46. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice, DHS 1606, that she was not eligible for the Medicare Cost Share Program because she had full MA coverage from [REDACTED]-ongoing. Department Exhibit 1, pgs. 47-4. On [REDACTED], the Department received a hearing request from Petitioner's son, contesting the Department's negative action. BEM 405.

BEM 405, PAGES 2-15

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

Note: See Annuity Not Actuarially Sound and Joint Owners and Transfers in this item and BEM 401 about special transactions considered transfers for less than fair market value.

During the penalty period, MA will **not** pay the client's cost for:

- Long Term Care (LTC) services.
- Home and community-based services.
- Home help.
- Home health.

MA will pay for other MA-covered services.

Do **not** apply a divestment penalty period when it creates an undue hardship; see UNDUE HARDSHIP in this item.

RESOURCE DEFINED

Resource means all the client's and spouse's assets and income. It includes all assets and all income, even countable and/or excluded assets, the individual or spouse receive. It also includes all assets and income that the individual (or spouse) were entitled to but did **not** receive because of action by one of the following:

- The client or spouse.
- A person (including a court or administrative body) with legal authority to act in place of or on behalf of the client or the client's spouse.
- Any person (including a court or administrative body) acting at the direction or upon the request of the client or his/her spouse.

TRANSFER OF A RESOURCE

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. **Not** all transfers are divestment. Examples of transfers include:

- Selling an asset for fair market value (not divestment).
- Giving an asset away (divestment).
- Refusing an inheritance (divestment).

- Payments from a **MEDICAID TRUST** that are **not** to, or for the benefit of, the person or his spouse; see BEM 401 (divestment).
- Putting assets or income in a trust; see BEM 401.
- Giving up the **right** to receive income such as having pension payments made to someone else (divestment).
- Giving away a lump sum or accumulated benefit (divestment).
- Buying an annuity that is **not** actuarially sound (divestment).
- Giving away a vehicle (divestment).
- Putting assets or income into a Limited Liability Company (LLC)

Also see Joint Owners and Transfers for examples.

LOOK-BACK PERIOD

The first step in determining the period of time that transfers can be looked at for divestment is determining the **baseline date**; see Baseline Date in this item.

Once the baseline date is established, you determine the look-back period. The look back period is 60 months prior to the baseline date for all transfers made after February 8, 2006.

Entire Period

Transfers that occur **on** or **after** a client's baseline date must be considered for divestment. In addition, transfers that occurred within the 60 month look-back period must be considered for divestment.

Penalty Situation

A divestment determination is **not** required unless, sometime during the month being tested, the client was in a penalty situation. To be in a penalty situation, the client must be eligible for MA (other than QDWI) and be one of the following:

- In an LTC facility.

- APPROVED FOR THE WAIVER; see BEM 106.
- Eligible for Home Help.
- Eligible for Home Health.

Baseline Date

A person's baseline date is the **first** date that the client was eligible for Medicaid and one of the following:

- In LTC.
- APPROVED FOR THE WAIVER; see BEM 106.
- Eligible for Home Health services.
- Eligible for Home Help services

A client's baseline date does **not** change even if one of the following happens:

- The client leaves LTC.
- The client is no longer APPROVED FOR THE WAIVER; see BEM 106.
- The client no longer needs Home Help.
- The client no longer needs Home Health.

LESS THAN FAIR MARKET VALUE

Less than fair market value means the compensation received in return for a resource was worth less than the fair market value of the resource. That is, the amount received for the resource was less than what would have been received if the resource was offered in the open market and in an arm's length transaction (see glossary).

Note: Also see Annuity Not Actuarially Sound above.

Compensation must have tangible form and intrinsic value.

Relatives can be paid for providing services; however, assume services were provided for free when no payment was made at the time services were provided. A client can rebut this presumption by providing tangible evidence that a payment obligation existed at the time the service was provided (for example a written agreement signed at the time services were first provided). The policy in Bridges Administrative Manual (BAM) 130 allowing use of best available information or best judgment as verification does **not** apply.

Transferring Homestead to Family

It is **not** divestment to transfer a homestead to the client's:

- Spouse; see Transfers Involving Spouse above.
- Blind or disabled child; see Transfers Involving Child above.
- Child under age 21.
- Child age 21 or over who:
 - Lived in the homestead for at least two years immediately before the client's admission to LTC or BEM 106 waiver approval, **and**
 - Provided care that would otherwise have required LTC or BEM 106 waiver services, as documented by a physician's (M.D. or D.O.) statement.
- Brother or sister who:
 - Is part owner of the homestead, **and**
 - Lived in the homestead for at least one year immediately before the client's admission to LTC or BEM 106 waiver approval.

Joint Owners and Transfers

When a client jointly owns a resource with another person(s), any action by the client or by another owner that reduces or eliminates the client's ownership or control is considered a transfer by the client.

Example: Mr. Jones is applying for MA. In 2005, he added his sister's name to his bank account. Each is free to withdraw as much money as desired so adding the sister's name did **not** affect the client's ownership or control. On September 1, 2007, the sister withdrew \$10,000 and deposited the money in her own bank account. Mr. Jones is considered to have transferred \$10,000 on September 1, 2007, the day he no longer had ownership and control of his money.

Example: Mr. Jones is applying for MA. On September 1, 2007, Mr. Jones gave his sister half interest in real estate. His equity value at the time was \$100,000. The ownership arrangement prevents either sibling from selling without the other's permission. Mr. Jones transferred a resource on September 1, 2007, the day he reduced his ownership and control by giving his sister part ownership and the power to

prevent sale. The amount transferred depends on whether his sister is refusing to sell. The transferred amount is:

- \$100,000 if she now refuses to sell.

Note: The transferred amount is used to calculate the divestment penalty. It is not used towards the countable asset limit for Mr. Jones' eligibility.

- \$50,000 if she now agrees to sell.

Note: Unless otherwise excluded, one-half the equity for the month being tested is a countable asset for purposes of Mr. Jones' asset eligibility and the other half is used to calculate the divestment penalty.

The same policy applies to resources the client's spouse owns jointly with other persons.

Exception: No penalty is imposed if the parties involved verify that the resource transferred actually belonged solely to the person to whom it was transferred.

PENALTY PERIOD

No Maximum Penalty

There is no maximum limit on the penalty period for divestment. There is no minimum amount of resource transfer before incurring a penalty, determine a penalty on **any** amount of resources that are transferred and meet the definition of a divestment even if the penalty is for one day. Divestment is a type of transfer **not** an amount of transfer.

Any penalty period established under previous policy continues until it ends.

Apply the penalty policy in place at the time of transfer for any transfers made before February 8, 2006.

Computing Penalty Period

Compute the penalty period on the total Uncompensated Value of all resources divested.

Determine the Uncompensated Value for each resource transferred and combine into a total Uncompensated Value.

Divide the total Uncompensated Value by the average monthly private LTC Cost in Michigan for the client's Baseline Date. This gives the number of full months for the penalty period. Multiply the fraction remaining by 30 to determine the number of days for the penalty period in the remaining partial month.

Apply the total penalty months and days. Apply a penalty even if the total amount of the penalty is for only a partial month.

Apply the penalty to the months (or days) an individual is eligible for Medicaid and actually in LTC, Home Health, Home Help, or the MIChoice Waiver. Do not apply the divestment penalty to a period when the individual is not eligible for Medicaid for any reason (that is the case closes for **any** reason or is eligible for Medicaid but is **not** in LTC, Home Help, Home Health, or the MIChoice Waiver. Restart the penalty when the individual is again eligible for Medicaid and in LTC, Home Help, Home Health, or MIChoice Waiver. When a medical provider is paid by the individual, or by a third party on behalf of the individual, for medical services received, that month is not a penalty month. Do not count that month as part of the penalty period. This does not include payments made by commercial insurance or Medicare; see Resources Returned in this item.

Note: An individual is not eligible for MA in a month they have pre-paid for LTC. Because federal law directs a resident in a nursing facility must have access to all monies held by the facility for the resident, count the money held by a nursing facility as cash.

A group 2 deductible eligible individual is not eligible for Medicaid until the deductible is met. Apply the penalty only to the days of the month after the deductible is met.

The 1st day the client is eligible to receive MA coverage for LTC, MIChoice, home help, or a home health service is the 1st day after the penalty period ends.

Baseline Date In Calendar Year	LTC Cost
█	\$ █
█	\$ █
█	\$ █

penalty must be determined under the policy in place at the time of discovery. If a penalty is determined for an unreported transfer in the past, apply the penalty from the first day after timely notice is given; see Recipient Exception in this item.

During the hearing, the Department APW stated that Petitioner's son name was added to the deed in [REDACTED], which was within the 5-year look back period. Her son is not disabled, so the transfer was for less than fair market value. As a result, the Department counted the divestment as \$ [REDACTED] based on a state equalized value (SEV) of 20,100 times 2. Department Exhibit 1, pg. 19. Petitioner had a divestment penalty from [REDACTED], through [REDACTED], because assets were transferred for less than fair market value.

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 Petitioner had transferred assets for less than fair market value by adding her non-disabled son's name to her homestead deed, which resulted in a divestment penalty from [REDACTED], through [REDACTED].

DECISION AND ORDER

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

CF/bb



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

DHHS

[Redacted]

Authorized Hearing Rep.

[Redacted]

Petitioner

[Redacted]