



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 25, 2017
MAHS Docket No.: 17-009307
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 September 19, 2017, from Detroit, Michigan. Petitioner did not appear and was represented by an attorney, [REDACTED]. [REDACTED], Petitioner's brother-in-law and authorized representative (AR), testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED] [REDACTED] of the Office of Attorney General. [REDACTED], supervisor, testified on behalf of MDHHS.

ISSUE

The issue is whether MDHHS properly factored Petitioner's transfer of assets as divestment.

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 September 28, 2016, Petitioner entered a long-term-care (LTC) facility.
2. Petitioner had a checking account.
3. On January 21, 2017, Petitioner's wrote a \$ [REDACTED] check from Petitioner's checking account to his daughter.
4. On January 21, 2017, Petitioner's AR wrote a \$ [REDACTED] check from Petitioner's checking account to himself.

5. On January 23, 2017, Petitioner's AR wrote a \$ [REDACTED] check from Petitioner's checking account to himself.
6. Petitioner's \$ [REDACTED] in asset transfers were for less than fair market value.
7. On February 14, 2017, Petitioner applied for Medicaid (see Exhibit A, pp. 127-130), including retroactive Medicaid from January 2017 (see Exhibit A, pp. 131-133); the application listed
8. On April 18, 2017, MDHHS determined, in part, that Petitioner was eligible for Medicaid subject to a divestment penalty from February 1, 2017, through June 15, 2017, due to \$ [REDACTED] in assets that were transferred for less than fair market value.
9. On July 13, 2017, Petitioner requested a hearing only to dispute the divestment penalty.
10. On an unspecified date, MDHHS determined Petitioner was eligible for Medicaid subject to a divestment penalty from February 1, 2017, through April 27, 2017, due to \$ [REDACTED] in assets transferred for less than fair market value.

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 requested a hearing to dispute a determination of Medicaid. MDHHS presented a Health Care Coverage Determination Notice (Exhibit 1, pp. 135-139) dated April 18, 2017. The notice informed Petitioner of an approval for Medicaid, effective February 2017, subject to a monthly deductible of \$ [REDACTED] and a divestment penalty from February 1, 2017, through June 15, 2017. The notice also denied Petitioner's request for retroactive Medicaid from January 2017.

It was not disputed that MDHHS later updated their determination of Petitioner's eligibility. MDHHS did not present written notice of the updated determination, but it was not disputed that MDHHS amended Petitioner's Medicaid eligibility to a divestment penalty from February 1, 2017, through April 27, 2017, based on \$ [REDACTED] in assets transferred for less than fair market value.

Divestment is a type of transfer of a resource and not an amount of resources transferred. BEM 405 (January 2017), 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; see definition in glossary), [and] is not listed... under TRANSFERS THAT ARE NOT DIVESTMENT. *Id.* [MDHHS is to] treat transfers by... [anyone acting in place of a client] as transfers by the client or spouse. *Id.*, p. 3.

Divestment results in a penalty period in MA, not ineligibility. *Id.* During the penalty period, MA will not pay the client's cost for... LTC services, home and community based services, home help, [and] home health. *Id.*

During the hearing, Petitioner's attorney acknowledged that neither the deductible nor denial of Medicaid for January 2017 were disputed. Petitioner's attorney also acknowledged that the only dispute concerning divestment was whether \$ [REDACTED] in assets were transferred for less than fair market value.

[Fair market value is] the amount of money the owner would receive in the local area for his asset (or his interest in an asset) if the asset (or his interest in the asset) was sold on short notice, possibly without the opportunity to realize the full potential of the investment. Bridges Program Glossary (October 2015), p. 25. That is, what the owner would receive and a buyer be willing to pay on the open market and in an arm length transaction. *Id.*

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. BEM 405 (January 2017), p. 6. 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. *Id.* Compensation must have tangible form and intrinsic value. *Id.*

MDHHS presented a photocopy of check # [REDACTED] from Petitioner's checking account (Exhibit A, pp. 157). The check was dated January 21, 2017, and paid to the order of Petitioner's AR's daughter in the amount of \$ [REDACTED]. Petitioner's attorney contended that the transfer of funds was not divestment because the money always belonged to Petitioner's AR's daughter.

Petitioner's AR testified that his daughter was the caretaker for Petitioner. Petitioner's AR testified that his daughter and Petitioner shared a bank account for purposes of expenses. Petitioner's AR also testified that his daughter was disabled due to mental health symptoms which contributed to his daughter not having her own bank account.

Petitioner failed to present documentary evidence justifying that the withdrawn monies belonged to Petitioner's AR's daughter. The absence of documentary evidence is supportive in rejecting the claim that the monies belonged to someone other than Petitioner.

Petitioner's AR's testimony implying that his daughter needed a bank account with Petitioner due to bipolar disorder symptoms was dubious. As the caretaker to Petitioner, it is curious that Petitioner's AR's daughter would be competent enough to care for Petitioner, yet be too incompetent to have her own account. It is also curious how allowing Petitioner's AR's daughter to have access to Petitioner's funds is a helpful solution to Petitioner's alleged incompetency in having her own bank account. Neither curiosity was persuasively explained during the hearing. It is found that MDHHS properly determined that Petitioner received less than fair market value for a \$ [REDACTED] transfer.

MDHHS presented photocopies of checks # [REDACTED] (Exhibit A, p. 159) and # [REDACTED] (Exhibit A, p. 160) from Petitioner's checking account. Check # [REDACTED] was dated January 21, 2017, and paid to the order of Petitioner's AR in the amount of \$ [REDACTED]. Check # [REDACTED] was dated January 23, 2017, and paid to the order of Petitioner's AR in the amount of \$ [REDACTED]. Petitioner's attorney contended that the transfer of funds was not divestment because the money was intended to repair Petitioner's home.

Home Care Contract means a contract/agreement which pays for expenses such as home/cottage/care repairs, property maintenance, property taxes, homeowner's insurance, heat and utilities for the homestead or other real property of the client's. *Id.*, p. 7. All Personal Care and Home Care contracts/agreements... must be considered and evaluated for divestment. *Id.* Personal Care and Home Care contracts/agreements shall be considered a transfer for less than fair market value unless the agreement meets all of the following:

- The services must be performed after a written legal contract/agreement has been executed between the client and the provider. The contract/agreement must be dated and the signatures must be notarized. The services are not paid for until the services have been provided (there can be no prospective payment for future expenses or services); and
- At the time the services are received, the client cannot be residing in a nursing facility, adult foster care home (licensed or unlicensed), institution for mental diseases, inpatient hospital, intermediate care facility for individuals with intellectual disabilities or be eligible for home and community based waiver, home health or home help; and
- At the time services are received, the services must have been recommended in writing and signed by the client's physician as necessary to prevent the transfer of the client to a residential care or nursing facility. Such services cannot include the provision of companionship; and
- The contract/agreement must be signed by the client or legally authorized representative, such as an agent under a power of attorney, guardian, or conservator. If the agreement is signed by a representative, that representative cannot be the provider or beneficiary of the contract/agreement.
- MDHHS will verify the contract/agreement by reviewing the written instrument between the client and the provider which must show the type, frequency and duration of such services being provided to the client and the amount of

consideration (money or property) being received by the provider, or in accordance with a service plan approved by MDHHS.

Id., p. 8.

Petitioner presented a "Proposal" (Exhibit 1, p. 116) dated February 25, 2017, from a contracting company. A company address was not apparent. The document described various waterproofing repairs (presumably to Petitioner's home) at an estimate of \$[REDACTED]. The estimate was signed by a representative of the agency providing the estimate. An "Acceptance of Proposal" section was unsigned.

Petitioner presented a "Contractor's Invoice" (Exhibit 1, p. 117) dated March 24, 2017. The document listed a \$[REDACTED] estimate to build a handicap ramp at the same address listed on the "Proposal".

Petitioner's attorney characterized the presented documents as proposals for work, rather than estimates. Whether they're labeled estimates or proposals is of no matter.


It was not disputed that the documents reflected the cost of estimated work at Petitioner's home which was not yet performed as of the date of hearing. The documents were not notarized as required by MDHHS policy. Most importantly, the documents created no contractual obligation for Petitioner to have the work performed.

It is found that the MDHHS properly determined the transfer of checks # [REDACTED] and # [REDACTED] totaling \$ [REDACTED] to be for less than fair market value. With no other disputes to be resolved, it is found that MDHHS properly imposed a divestment penalty based on \$ [REDACTED] in transferred assets.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined a divestment penalty from February 1, 2017, through April 27, 2017, based on \$ [REDACTED] in assets transferred for less than fair market value. The actions taken by MDHHS are **AFFIRMED**.

CG/



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

Via email

Counsel for Respondent

[REDACTED]

DHHS

[REDACTED]

Counsel for Petitioner

[REDACTED]

Via USPS

Petitioner

[REDACTED]