



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR



Date Mailed: January 17, 2018
MAHS Docket No.: 17-014693
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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; 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, an in-person hearing was held on December 19, 2017, from [REDACTED] Michigan. Petitioner was represented by attorney [REDACTED]. [REDACTED], Petitioner's husband, appeared and testified for Petitioner. The Department of Health and Human Services (Department) was represented by Assistant Attorney General [REDACTED] who appeared by telephone. [REDACTED], Long Term Care Eligibility Specialist, appeared and testified for the Department. Department Exhibit 1, pp. 1-114 was received and admitted without objection.

ISSUE

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

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 13, 2017, Petitioner entered long term care.
2. On July 25, 2017, Petitioner applied for Long Term Care Medicaid.

3. On October 30, 2017, Notice of Case Action was sent to Petitioner informing her that the Department was upholding the finding of divestment in the amount of \$ [REDACTED]
4. On November 6, 2017, Petitioner requested hearing contesting the determination of divestment and imposition of divestment penalty period.
5. At hearing, Petitioner's attorney conceded that the \$ [REDACTED] in personal cash gifts to individuals were divestment.
6. During the 5 year look back period, Petitioner and her husband made donations to churches and religious organizations totaling \$ [REDACTED]

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.

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

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 p.11 (July 2016)

In this case, Petitioner and her husband made donations to churches and religious groups during the look back period totaling \$ [REDACTED]. Petitioner's husband credibly testified at hearing that these donations were made as part of he and his wife's religious practices and not to become eligible for LTC Medicaid or in anticipation of needing LTC Medicaid. Petitioner's husband credibly testified that he did not anticipate his wife ever needing nursing home care because he intended to take care of her at home. Petitioner's husband testified regarding his extensive efforts to keep his wife out of the nursing home and at the time of hearing she was back at home. Petitioner's husband testified that the religious organizations they made donations to were connected to the religious programming that they viewed on television. Petitioner's husband credibly testified that he and his wife decided on the amounts of the donations based on a rough estimate of what they would have donated if they were attending services in person on a weekly basis.

Petitioner's husband credibly testified that the donations to churches and religious organizations were made for another purpose other than to qualify or remain eligible for Medicaid, specifically as part of their religious practice, and thus are not divestment pursuant to BEM 405 p.11. It is implausible that Petitioner made donations in June 2015, August 2015, and December 2016 to religious organizations and religious charities in anticipation of needing to become eligible for MA-LTC many months later especially considering that Petitioner would have been asset eligible had the donations not been made.

The Department position is that Petitioner and her husband increased their donations to churches and religious organizations both in frequency and in amount in the months leading up to Petitioner going into a nursing home as a "cash dump" in an effort to be asset eligible for MA. The Department asserts that Petitioner did not meet her burden to show that the donations were made for another purpose. The Department also points out that there was a substantial gap in time between Petitioner's donations to religious organizations between 2009 and 2015. The Department also asserts that Petitioner's health problems were substantial when the donations began again in 2015 and that

Petitioner had reason to believe LTC might be needed. However, it would be difficult for almost any elderly person, especially those of Petitioner's advanced age, who was not in perfect health to show convincing evidence that they had no reason to believe LTC might be needed. Petitioner presented clear and convincing evidence that the \$ [REDACTED] donations to religious organizations and charities were for another purpose other than to qualify or remain eligible for Medicaid and therefore were not divestment, specifically the donations were made as part of their religious practice. BEM 405

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 period as it pertains to the \$ [REDACTED] made to religious organizations and charities. Petitioner's Attorney conceded at hearing that the \$ [REDACTED] in payments made to individuals were divestment.

DECISION AND ORDER

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. Reduce the divestment amount to \$ [REDACTED] and recalculate the divestment penalty period.
2. Activate MA-LTC coverage once the divestment penalty has run.

AM/md



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

Counsel for Respondent

[REDACTED]

Counsel for Respondent

[REDACTED]

DHHS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]

Counsel for Petitioner

[REDACTED]