



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: July 6, 2018  
MAHS Docket No.: 18-003826  
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 June 14, 2018, from Lansing, Michigan. Petitioner was represented by Kevin Gilhool, Attorney, P# 52565. The Department of Health and Human Services (Department) was represented by Geraldine Brown, Assistant Attorney General, P# 67601, Marsha Dial, Assistance Payments Supervisor, and Edwina Dunson, Eligibility Specialist.

**ISSUE**

Did the Department properly determine that Petitioner's eligibility for long term care (LTC) Medical Assistance (MA) based on 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 [REDACTED] 2017, Petitioner applied for MA LTC. Department Exhibit 1, pgs. 3-6.
2. On January 17, 2018, the Department Caseworker sent Petitioner a Health Care Coverage Determination Notice, DHS 1606, stating that she was eligible for MA retroactive to November 1, 2017, through November 30, 2017, with a patient pay of \$1,201.00; December 1, 2017, through December 31, 2017, with a patient pay

of \$6,701.00; and January 1, 2018, ongoing, with a monthly patient pay of \$6,709.00. Department Exhibit 1, pgs. 7-11.

3. On January 24, 2018, the divestment penalty was not calculated by BRIDGES, so the case was sent to MDHHS Exceptions Unit, but they were unable to fix the case.
4. On January 31, 2018, the MDHHS Application Support (Help Desk) initiated a ticket (BR#369548) to fix the issue of BRIDGES not calculating a divestment penalty for the case.
5. On April 16, 2018, the Help Desk submitted an email to the Department Caseworker that no notice of the divestment penalty was generated based on an application date of November 29, 2017. As a result, an exception override was processed to set the divestment penalty periods of July 12, 2015, through July 23, 2015 for a divestment amount \$6,421.15, and May 1, 2018, through October 19, 2019, for a divestment amount of \$142,800.00, for an LTC penalty, because a divestment penalty cannot be authorized for a retroactive period when notifications were not previously sent. Department Exhibit 1, pgs. 12-15.
6. On April 18, 2018, the Department Caseworker sent Petitioner a Benefit Notice, DHS 176, to give notice that no notice of the divestment penalty was generated from the application date of November 29, 2017. A penalty cannot be authorized for a retroactive period when notifications were not previously sent. An exception override was processed to set the divestment penalty periods of July 12, 2015, through July 23, 2015, for a divestment amount \$6,421.15; and May 12, 2018, through October 19, 2019, for a divestment amount of \$142,800.00 to LTC. Department Exhibit 1, pgs. 16-17.
7. On April 17, 2018, the Department received a hearing request from Petitioner, contesting the Department's negative action because the notice sent on January 17, 2018, did not have a divestment penalty calculated where it was calculated that the divestment was 17.8 months beginning November of 2017 to May of 2019.

### **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 LTC on [REDACTED], 2017. Department Exhibit 1, pgs. 3-6. On January 17, 2018, the Department Caseworker sent Petitioner a Health Care Coverage Determination Notice, DHS 1605, stating that she was eligible for MA retroactive to November 1, 2017, through November 30, 2017, with a patient pay of \$1,201.00; December 1, 2017, through December 31, 2017, with a patient pay of \$6,701.00; and January 1, 2018, ongoing, with a monthly patient pay of \$6,709.00. Department Exhibit 1, pgs. 7-11. Through Department error, the divestment penalty was not calculated by BRIDGES and notice of divestment penalty was not sent to Petitioner.

On January 24, 2018, the divestment penalty was not calculated by BRIDGES, so the case was sent to MDHHS Exceptions Unit, but they were unable to fix the case. On January 31, 2018, the MDHHS Application Support (Help Desk) initiated a ticket (BR#369548) to fix the issue of BRIDGES not calculating a divestment penalty for the case. On April 16, 2018, the Help Desk submitted an email to the Department Caseworker that no notice of the divestment penalty was generated based on an application date of November 29, 2017.

As a result, an exception override was processed to set the divestment penalty periods of July 12, 2015, through July 23, 2015, for a divestment amount \$6,421.15; and May 1, 2018, through October 19, 2019, for a divestment amount of \$142,800.00 for an LTC penalty because a divestment penalty cannot be authorized for a retroactive period when notifications were not previously sent. Department Exhibit 1, pgs. 12-15. On April 18, 2018, the Department Caseworker sent Petitioner a Benefit Notice, DHS 176, to give notice that no notice of the divestment penalty was generated from the application date of November 29, 2017. A penalty cannot be authorized for a retroactive period when notifications were not previously sent. An exception override was processed to set the divestment penalty periods of July 12, 2015, through July 23, 2015, for a divestment amount \$6,421.15; and May 12, 2018, through October 19, 2019, for a divestment amount of \$142,800.00 to LTC. Department Exhibit 1, pgs. 16-17.

On April 17, 2018, the Department received a hearing request from Petitioner, contesting the Department's negative action because the notice sent on January 17, 2018 did not have a divestment penalty calculated where they calculated that the divestment was 17.8 months beginning November of 2017 to May of 2019.

During the hearing, Petitioner's Attorney stated that Petitioner had notice of the divestment penalty because they reported it to the Department when they applied for MA LTC on November 29, 2018. Petitioner Exhibit 1, pgs. a-c. However, the divestment penalty was not calculated due to agency error because of BRIDGES. Even though the Department was aware of the divestment penalty and the amount, BRIDGES did not calculate the penalty and put it on the system to then send Petitioner a notice as

required by policy. If the divestment penalty is not on the system, then the divestment penalty period cannot begin.

BEM 405, pg. 4-5.

#### 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.

<b>Baseline Date In Calendar Year</b>	<b>LTC Cost</b>
2018	\$8261
2017	\$8018
2016	\$8282
2015	\$8084
2014	\$7867
2013	7631
2012	\$7032
2011	\$6816
2010	\$6618
2009	\$6362
2008	\$6191
2007	\$5938
2006	\$5549
2005	\$5367
2004	\$5250
2003	\$5043
2002	\$4703
2001	\$4518
2000	\$4331
1999	\$3981
1998	\$3711
1997	\$3507
<b>Before January 1997</b>	\$3441

The penalty period starts on the date which the individual is eligible for Medicaid and would otherwise be receiving institutional level care (LTC, MIChoice waiver, or home help or home health services), and is not already part of a penalty period. When a medical provider is paid by the individual, or by a third party on behalf of the individual, for medical services received, the individual is not eligible for Medicaid in that month and the month is not a penalty month. That month cannot be counted as part of the penalty period. This does not include payments made by commercial insurance or Medicare.

**Note:** If a past unreported divestment is discovered or an agency error is made which should result in a penalty, a 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.

#### Recipient Exception

Timely notice must be given to LTC recipients and (BEM 106) waiver recipients before actually applying the penalty. Adequate notice must be given to new applicants.

This Administrative Law Judge finds that even though the Department was aware of the divestment penalty at application on [REDACTED], 2017, BRIDGES still needed to determine the divestment penalty and put it on the system, then send a notice as required by policy. There was an issue with BRIDGES and the divestment penalty was not calculated as shown on the notice sent on January 17, 2018. The Department became aware and sent the case to the Exceptions Unit to be fixed on January 24, 2018, but they could not fix the case. A BRIDGES fix ticket (BR#369548) had to be issued on January 31, 2018, to get the system to calculate the divestment penalty and put it on the system, then send Petitioner a notice.

Even after the ticket was fixed in that BRIDGES calculated the divestment penalty and put it in the system on April 18, 2018, BRIDGES still did not generate the notice as required by policy, so it had to be manually sent by the Department Caseworker to Petitioner. A penalty cannot be authorized for a retroactive period when notifications were not previously sent. As a result, the Department properly implemented the divestment policy after adequate notice was sent to Petitioner as required by policy.


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 due to agency error an exception override

was processed on April 18, 2018, to set the divestment penalty periods of July 12, 2015, through July 23, 2015, for a divestment amount \$6,421.15; and May 12, 2018, through October 19, 2019, for a divestment amount of \$142,800.00 to LTC, and the Department Caseworker sent Petitioner a Benefit Notice, DHS 176, to give notice that no notice of the divestment penalty was generated from the application date of November 29, 2017, on April 18, 2018, manually, since the BRIDGES system still did not generate a notice even though the divestment penalty was calculated and on the system.

**DECISION AND ORDER**

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

CF/dh



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**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) 763-0155; 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**

Christine Steen  
3040 West Grand Blvd  
Suite 4-250  
Detroit, MI 48202

Wayne County (District 82), DHHS

BSC4 via electronic mail

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