



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: March 18, 2019
MAHS Docket No.: 18-010238
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 three-way telephone hearing was held on February 25, 2019, from Detroit, Michigan. Petitioner was not present for the hearing. Petitioner was represented by his Authorized Hearing Representative (AHR) [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Supervisor, and [REDACTED], Long Term Care Specialist.

ISSUE

Did the Department properly determine that Petitioner divested [REDACTED] and as a result, impose a Medical Assistance (MA) divestment penalty for the period from June 1, 2018 to March 21, 2019?

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 or around February 7, 2018 Petitioner was admitted to a long-term-care (LTC) facility. (Exhibit A, p. 6)
2. On July 10, 2018 Petitioner's authorized representative (AR) submitted an Application for Health Care Coverage Patient of Nursing Facility (DHS-4574) (Application) on Petitioner's behalf with a request for Retroactive MA coverage for June 2018. (Exhibit A, pp. 6-12)
3. In processing the Application and reviewing Petitioner's assets, specifically, his bank account information, the Department discovered that in the five years prior to

the Application, Petitioner had made numerous cash withdrawals from his account with [REDACTED] (account number ending in 4809). (Exhibit A, pp. 41-161)

4. The Department identified the cash withdrawals that were in question in a spreadsheet. The Department determined that the transactions/withdrawals at issue total [REDACTED]. (Exhibit A, pp. 23-27)
5. On July 12, 2018, the Department sent Petitioner and his AR a Verification Checklist (VCL) instructing them to submit proof of asset transfers and money held by others. Included with the VCL was the spreadsheet that identified the questionable transactions. Petitioner and his AR were instructed to provide documentation such as invoices, checks, or statements to substantiate the expenses claimed. The verifications were due to the Department by July 23, 2018. (Exhibit A, pp. 13-14)
6. Neither Petitioner nor his AR submitted the requested documentation to the Department by the July 23, 2018 due date reflected on the VCL.
7. The AR informed the Department through email communications that after speaking with Petitioner, who has mental health issues including schizophrenia, he indicated that he would take money out of his account and keep it in a drawer at home to give money to people who were in need and who asked. He reported to the AR that he probably gave about [REDACTED] to his girlfriend to help with rent, car, and medical bills. (Exhibit A, pp. 28, 39-40)
 - a. The AR informed the Department that Petitioner reported giving so much away that he does not know to who or how much. The email further indicates that all of the money spent was done so without the intent to divest. (Exhibit A, pp. 28, 39-40)
8. On August 7, 2018 the Department sent Petitioner and his AR a Benefit Notice (Notice) notifying them that Petitioner was approved for MA coverage, but a divestment penalty (based on the [REDACTED] in cash divested) applied which precluded any LTC benefits from June 1, 2018 to March 21, 2019. (Exhibit A, pp. 15-16)
9. On December 5, 2018 Petitioner, through his representative, requested a hearing disputing the Department's actions, specifically the divestment penalty. (Exhibit A, pp. 1-5)

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 the August 7, 2018 Notice, the Department concluded that Petitioner's MA eligibility was subject to a divestment penalty from June 1, 2018 to March 21, 2019, precluding LTC benefits on Petitioner's behalf during that period, as it determined a divestment occurred. (Exhibit A, pp. 15-16).

Divestment is a type of transfer of a resource and not an amount of resources transferred. Resource means all the client's assets and income. Transferring a resource means giving up all or partial ownership in the resource. Cash in bank accounts is an asset. Thus, giving away cash, is divestment. Divestment results in a penalty period, not MA program ineligibility. BEM 405 (April 2018), pp. 1-2. BEM 400 (May 2018), pp.1-3. During the penalty period, MA will not pay the client's cost for: LTC services; home and community-based services; home help; or home health. MA will pay for other MA-covered services. BEM 405, p. 1. A divestment is a transfer of a resource by a client that is (i) within a specified time (the look-back period), (ii) for less than fair market value (FMV), and (iii) not an excluded transfer. BEM 405, p. 1.

At issue in this case are cash withdrawals from Petitioner's [REDACTED] bank account that were made between the time period of June 2013 and May 2018 totaling [REDACTED]. The transactions considered by the Department are identified on the spreadsheet prepared. (Exhibit A, pp. 23-27, 41-161).

To determine if an asset transfer qualifies as divestment, the baseline date must first be established. A person's baseline date is the first date that the client was eligible for MA and one of the following: in LTC; approved for the waiver; eligible for home health services; or eligible for home help services. BEM 405, p. 6. Transfers that occur on or after a client's baseline date must be considered for divestment. In addition, once the baseline date is established, the Department will determine the look-back period, which is 60 months prior to the baseline date for all transfers made after February 8, 2006. BEM 405, p. 5.

In this case, the Department testified that it applied a base line date of June 1, 2018. Thus, the Department properly determined that the cash asset transfers referenced above were within the look-back period, or the timeframe that allows for a divestment penalty. Because the transfers were made within the look-back period, the Department must then consider whether the transfers were made for less than fair market value. Less than fair market value means that the compensation received in return for a resource was worth less than the fair market value of the resource. BEM 405, pp. 6-7.

The Department testified that based on information received from Petitioner's AR in the emails identified above, specifically, that Petitioner reported giving money away to people who were in need and did not know how much he gave away and that that he probably gave about \$[REDACTED] to his girlfriend to help with rent, car and medical bills, and further because the Department did not receive any documentation verifying how the money withdrawn from Petitioner's bank account was spent and whether it was used to pay living expenses as alleged, it concluded that the cash from the withdrawals was divested.

At the hearing, Petitioner's AHR asserted that absent some fact or evidence demonstrating that an individual relinquished ownership by giving the resource to some third party, cash withdrawals from a bank account do not in and of themselves meet the definition of an asset transfer. Petitioner's AHR argued that Petitioner's cash withdrawals from his individual bank account are not considered transfers of a resource, as he did not give up all or part of his ownership in the cash withdrawn and instead used it for living expenses. The AHR asserted that due to Petitioner's mental condition, he is not to be considered a reliable source of information, thus, the information in the email sent to the Department which indicates Petitioner reported giving some of his money away is not credible.

The AHR also asserted that prior to his admission to LTC, Petitioner had been living with a friend and had no reason to expect he would be applying for MA, thus there was no intent to divest. She stated that Petitioner had been falling due to weakness and a falling incident required him to be hospitalized and subsequently transferred to nursing care. Department policy provides that transfers exclusively for a purpose other than to qualify for MA are not divestment. However, the Department is to assume that transfers for less than fair market value are for MA eligibility purposes until the client provides convincing evidence that they had no reason to believe that LTC services might be needed. BEM 405, p. 11. In this case however, the testimony from the AHR indicated that at the time of Application, Petitioner was [REDACTED] years old with history of mental illness that has rendered him unable to work since 1967, as well as a history of being institutionalized due to his mental condition. Thus, considering Petitioner's age and medical condition, one could reasonably believe that he may need LTC services.

Petitioner's AHR argued that Petitioner did not have a credit card and paid for all of his living expenses including rent, food, clothing, and medications using cash. She testified that based on her estimated calculations, Petitioner had in total an average of \$[REDACTED] in annual expenses. She stated that considering the balance in Petitioner's bank account at the start of the look back period and then considering his income and expenses, it would be impossible for Petitioner to have divested or given away \$[REDACTED], as he would have had no money left to pay for his monthly expenses. Petitioner's AHR confirmed that he did not keep any receipts, billing statements or invoices for the expenses paid, thus the estimated annual expense calculations could not be verified.

While a cash withdrawal alone may not be considered the transfer of a resource and thus, divestment, the giving away of an asset like cash is a divestment. BEM 405, p. 2.

Based on the information contained in the email from Petitioner's AHR, the Department had information to suggest that a divestment may have occurred by Petitioner giving away cash assets. Therefore, the Department was authorized to require Petitioner to verify that the questionable cash withdrawals were used for legitimate living expenses as alleged and not transferred to a third party for less than FMV. BEM 405, pp. 17-18.

There was no evidence that Petitioner or his AR provided the Department with any documentary support for the expenses incurred and allegedly paid in cash nor was there any record of statements for bills, receipts for expenditures, invoices for medications, rental expense receipts or other similar documentation to support Petitioner's position that the cash withdrawals were used solely for living expenses. Upon thorough review, the Department properly concluded that the cash withdrawals resulted in a transfer of funds because Petitioner could not produce any evidence verifying that the use of the funds was for purchases for FMV. Therefore, the Department properly concluded that the funds were divested, as there was no evidence presented to the contrary and Petitioner's verbal statement alone that the funds were not transferred for less than FMV is insufficient.

Because the Department established that a divestment occurred, an analysis of the computation of the applicable penalty period follows. The Department determined that Petitioner was subject to a divestment penalty for the period between June 1, 2018 and March 21, 2019. The Department stated that in computing the penalty period, it relied on the \$[REDACTED] in cash asset transfers discussed above. Department policy provides that the penalty period is computed based on the total uncompensated value of all resources divested, which in this case is the cash value. Once the total uncompensated value is determined, the Department is to divide that amount by the average monthly private LTC Cost in Michigan, which is based on the client's baseline date. This gives the number of full months for the penalty period. The fraction remaining is multiplied by 30 to determine the number of days for the penalty period in the remaining partial month. BEM 405, pp. 12-15. Applying Department policy to Petitioner's case, based on a \$[REDACTED] total uncompensated value of the divested resources and an \$8,261 average monthly private LTC cost in Michigan applicable to Petitioner's 2018 baseline date, the divestment penalty is nine months and 21 days. Therefore, upon review, the Department properly applied a divestment penalty from June 1, 2018 to March 21, 2019.

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 processed Petitioner's MA eligibility and determined that he was subject to a divestment penalty for the period from June 1, 2018 to March 21, 2019.

DECISION AND ORDER

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

ZB/tlf



Zainab A. Baydoun
Administrative Law Judge
for Robert Gordon, 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

Via Email:

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

Authorized Hearing Rep.

- **Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

- **Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]