



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: February 21, 2019
MAHS Docket No.: 18-013124
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 January 22, 2019, from Detroit, Michigan. The Petitioner was not present but was represented by [REDACTED] his Authorized Hearing Representative. [REDACTED] also appeared on behalf of Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Supervisor.

ISSUE

Did the Department properly determine Petitioner's Medical Assistance (MA) divestment penalty period of January 1, 2019 through September 10, 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 April 4, 2018, Petitioner received a lump sum payment in the amount of \$ [REDACTED]
2. On [REDACTED] 2018, Petitioner applied for MA benefits to pay for his home care.
3. The Department reviewed Petitioner's case and determined that his baseline date was August 2015.
4. On March 30, 2015, Petitioner and his wife quit claimed a home to themselves and their two disabled sons.

5. Petitioner gave his niece \$[REDACTED] for the purchase of a camper, two months paid rent, utility payments and prescription cost;
6. Petitioner also gave his niece \$[REDACTED] for household items.
7. Petitioner gave \$[REDACTED] to [REDACTED]
8. Petitioner transferred his ownership in two vehicles to his wife and disabled son.
9. On November 19, 2018, the Department sent Petitioner a Health Care Coverage Determination Notice which notified Petitioner that he had been given a divestment penalty, which was to begin on January 1, 2019 and continue until September 10, 2019.
10. On November 27, 2018, Petitioner's AHR filed a Request for Hearing disputing the Department's actions.

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.

Additionally, 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. BEM 405, p. 6.

In this case, the Department testified that Petitioner's baseline date was August 13, 2015 as this was the first time Petitioner was in a facility. 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. 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. BEM 405, p. 5. As such, the Department is entitled to look at any transfers which occurred 60 months prior to August 13, 2015 and any transfers occurring on or after August 13, 2015.

Petitioner transferred his ownership in a camper to his wife and son. The Department valued the camper at [REDACTED]. Petitioner also transferred a [REDACTED] to his wife and son which the Department valued at [REDACTED]. Under Department policy, it is **not** divestment to transfer resources from the client to:

- The client's spouse.
- Another SOLELY FOR THE BENEFIT OF the client's spouse.

Transfers from the client's spouse to another SOLELY FOR THE BENEFIT OF the client's spouse are **not** divestment. BEM 405, p. 9. Other transfers known to the Department at the time the penalty was determined included: [REDACTED] to Petitioner's niece for the purchase of a camper, two months paid rent, utility payments and prescription cost; and [REDACTED] to Petitioner's niece for household items.

Lastly, Petitioner and his wife quit claimed their home to their three children which the Department argued prevented them from utilizing the resource. A review of the deed shows that Petitioner and his wife retained ownership in the home and their two sons were added to the deed. The Department valued the home at [REDACTED]. Petitioner's wife testified that her two sons are disabled. Under Department policy, a transfer to the client's blind or disabled (see BEM 260) child, regardless of the child's age or marital status, are **not** divestment. This includes transfers to a trust established SOLELY FOR THE BENEFIT OF the child. Because the transfer of the vehicles and the home was to Petitioner's wife and/or two disabled sons, it should not have been included in the penalty calculation. The transfers to Petitioner's niece are a divestment. Further, prior to the date of the hearing, the Department was unaware of a transfer to [REDACTED] in the amount of [REDACTED]. As such, this transfer would be subject to a divestment penalty.

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 calculated Petitioner's divestment penalty period of January 1, 2019 through September 10, 2019.

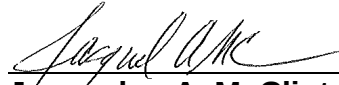
DECISION AND ORDER

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. Redetermine the divestment penalty period; and
2. Notify Petitioner and his AHR in writing of its decision.

JAM/tlf



Jacquelyn A. McClinton
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:

MDHHS-906-Hearings
BSC1 Hearing Decisions
EQAD

[REDACTED]

MAHS

Petitioner – Via USPS

[REDACTED]

[REDACTED]

[REDACTED]

Authorized Hearing Rep. – Via USPS

[REDACTED]

[REDACTED]

[REDACTED]