



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 14, 2019
MAHS Docket No.: 18-011084
Agency No.: ██████████
Petitioner: ██████ ██████

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 3, 2019 from Lansing, Michigan. The Petitioner was represented by Attorney ██████████. The Department of Health and Human Services (Department) was represented by H. Daniel Beaton and Anthony Sukka, Assistant Attorney General's.

ISSUE

Did the Department properly impose a divestment penalty for the months of October 2018 through October 17, 2019?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner is a MA recipient and resides in a long-term care facility.
2. On ██████████ ██████████ 2017 the Petitioner submitted an MA application to the department. Petitioner listed under Assets, two ██████████ bank accounts, numbered ██████████ and ██████████ and indicated that she was a joint owner of the accounts with her daughter, ██████████ ██████████ [Hearing Packet, p 37].
3. On August 6, 2018, ██████████ ██████████ Petitioner's son and power of attorney, submitted and reviewed the redetermination with the department. The department explained to Mr. ██████████ that removing the Petitioner's name from the

██████████ bank accounts would be considered a divestment. [Hearing Summary packet, p 22-29].

4. On September 17, 2018, the department mailed Petitioner a Health Care Coverage Determination Notice explaining that Medicaid would not pay for her long-term-care and home and community-based waiver services from October 1, 2018 through October 17, 2019 because she, or her spouse, had transferred assets or income for less than fair market value. [Hearing Summary packet, p 30-34].
5. The Department considered the removal of Petitioner's name from the ██████████ accounts a divestment of \$ ██████████ resulting in the imposition of a divestment penalty period.
6. The divestment period is from October 2018 to October 17, 2019.
7. Long-term-care Specialist Jessica Ursuy credibly testified during the hearing that Petitioner only provided her office with two-years of documentation, not the five years of documentation required by policy. Further, of the information received by the department prior to September 17, 2018, there was incomplete evidence in the documentation submitted. For example, there was a deposit for \$ ██████████ with no evidence of who deposited the monies to the account. Also, no evidence was submitted showing who made a withdrawal of \$ ██████████. In addition, the pay stubs that were provided did not support the deposits shown in the bank statements. [Testimony of Jessica Ursuy, 1/3/2019].
8. On November 1, 2018 the Department received the Petitioner's timely written request for hearing.

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.

Divestment results in a penalty period in MA, not ineligibility. BEM 405, p 1 (4/1/2016). During the penalty period, MA will not pay for long-term care services. *Id.* Divestment means a transfer of a resource by a client (or spouse) that is within the look-back period and is transferred for less than fair market value ("FMV"). *Id.* Transferring a resource means giving up all or partial ownership in, or rights to, a resource. *Id.* Resource means all the client's (and spouse's) assets and income. *Id.*; 20 CFR 416.1201. Less than FMV means the compensation received in return for a resource was worth less than the FMV of the resource. BEM 405, 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.*

The first step in determining the period of time that transfers can be looked at for divestment is to determine the baseline date. BEM 405, p 6. The baseline date (applicable in this case) is the date in which the client was an MA applicant and in a long-term care facility. *Id.* The baseline was determined to be May 21, 2018 in this case. [Dept. Exh. 32].

Transfers that occur on or after a client's baseline date, May 21, 2018 in above-captioned case, must be considered for divestment. [Dept. Exh. 32; BEM 405, p 5]. The department looks back 60 months for all transfers made after February 8, 2006. [BEM 405, p 5]. Transfers made by anyone acting in place of, on behalf of, at the request of, or at the direction of the client/spouse during the look-back period are considered. *Id.*

In this case, Petitioner applied for MA long term care benefits on September 27, 2017, and listed as assets, two separate accounts at the [REDACTED] [REDACTED]. While completing the yearly review of Petitioner's redetermination in August 2018 for MA benefits, the department discovered Petitioner's name had been removed from both [REDACTED] accounts in January 2018. Petitioner received nothing in return for giving up all or partial ownership in the [REDACTED] accounts.

On September 17, 2018, the Department mailed Petitioner a Health Care Coverage Determination Notice informing her of the divestment penalty. The divestment penalty was a result of Petitioner being removed from the two [REDACTED] [REDACTED] accounts. The penalty was calculated by the total amount in both accounts when Petitioner's name was removed. The total value of both accounts was \$ [REDACTED].

As a result, per department policy, Petitioner transferred her rights to the resources in the Huntington accounts in the amount of \$ [REDACTED]. Petitioner received no compensation for the transfer of \$ [REDACTED].

The Notice further explained that Medicaid would not pay for Petitioner's long-term-care from October 1, 2018 through October 17, 2019, because she had given away assets for less than their fair market value. During the hearing in the above captioned case, the calculation of the divestment penalty was not questioned.

The Department will cancel a divestment penalty if either of the following occurs before the penalty is in effect: all the transferred resources are returned and retained by the individual or fair market value is paid for the resources. BEM 405, p 16. The Department will then recalculate the penalty period if either of the following occurs while the penalty is in effect: (1) all the transferred resources are returned; or (2) full compensation is paid for the resources. *Id.* As of the date of the Health Care Coverage Determination Notice, the department had not received proof that all the transferred resources had been returned.

The department indicated that Petitioner failed to submit the required documentation for the 5-year look-back period and what they did submit only covered the previous two years and did not conclusively show that Petitioner had not deposited monies in the accounts or withdrawn monies from the accounts. Petitioner contends that she should not be punished for the bank's delay in providing account information allegedly showing that she never put any monies into either account, nor withdrew monies from either account. This Administrative Law Judge finds Petitioner's argument unpersuasive.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

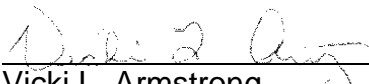
The credible testimony of the department representative showed that the evidence Petitioner had already provided to the department did not show that Petitioner had never deposited monies into the accounts or withdrawn funds from the accounts. Further, the representative testified as to unexplained deposits and withdrawals shown in the evidence Petitioner presented to the department, that never conclusively showed who made the deposits or who withdrew the monies.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Based on the above Findings of Fact and Conclusions of Law, the Administrative Law Judge finds that the Department acted in accordance with Department policy when it determined that a divestment occurred.

DECISION AND ORDER

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

VLA/nr



Vicki L. Armstrong
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
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