



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: January 16, 2019
MAHS Docket No.: 18-012255
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, a telephone hearing was held on January 3, 2019, from Lansing, Michigan. The Petitioner was represented by her guardian [REDACTED] [REDACTED]. The Department of Health and Human Services (Department) was represented by Jennifer Eastman Community Resource Coordinator. Department Exhibit 1, pp. 1-38 was received and admitted. Petitioner Exhibit A, p. 1-7 was receive and admitted.

ISSUE

Did the Department properly determine that Petitioner divested money and properly impose a 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. Petitioner applied for MA on [REDACTED] [REDACTED] 2018.
2. A Health Care Coverage Determination Notice was sent to Petitioner on November 5, 2018, informing her that he was eligible for Medical Assistance (MA) effective October 1, 2018.
3. Divestment was found in the amount of \$ [REDACTED] and a 2 month and 2-day divestment penalty period was imposed from October 1, 2018, through December 20, 2018 based on monies withdrawn from Petitioner's bank account and paid to her daughter [REDACTED] [REDACTED].

4. On November 13, 2018, Petitioner requested hearing disputing the finding of divestment.
5. Petitioner's daughter [REDACTED] [REDACTED] stole \$ [REDACTED] from her bank account between June 6, 2018 and August 17, 2018. Petitioner's guardian filed a police report and [REDACTED] [REDACTED] was charged with embezzlement from a vulnerable adult and 4th degree vulnerable adult abuse. (Ex. A, p.7)

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.

TRANSFER OF A RESOURCE

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. **Not** all transfers are divestment. Examples of transfers include:

- Selling an asset for fair market value (not divestment).
- Giving an asset away (divestment).
- Refusing an inheritance (divestment).
- Payments from a **MEDICAID TRUST** that are **not** to, or for the benefit of, the person or his spouse; see BEM 401 (divestment).
- Putting assets or income in a trust; see BEM 401.
- Giving up the **right** to receive income such as having pension payments made to someone else (divestment).
- Giving away a lump sum or accumulated benefit (divestment).
- Buying an annuity that is **not** actuarially sound (divestment).
- Giving away a vehicle (divestment).
- Putting assets or income into a Limited Liability Company (LLC)
- Purchasing an asset which decreases the group's net worth and is not in the group's financial interest (divestment). BEM 405

In this case, Petitioner's daughter [REDACTED] [REDACTED] stole \$ [REDACTED] from her bank account between June 6, 2018 and August 17, 2018. Petitioner's daughter withdrew money from Petitioner's bank account without her consent or approval. Petitioner filed a police report and the [REDACTED] [REDACTED] [REDACTED] filed charges against Petitioner's daughter for embezzlement from a vulnerable adult and 4th degree vulnerable adult abuse. (Ex. A,

p.7) Department policy states that divestment is giving away an asset or selling an asset for less than fair market value. BEM 405 Petitioner did not give away assets, her assets were stolen from her, therefore divestment did not occur. Therefore, the Department's determination of divestment and imposition of a divestment penalty period was improper and incorrect.

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.


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. Lift the divestment penalty going back to the date of application.
2. Activate MA-LTC coverage effective October 1, 2018 if Petitioner is otherwise eligible.

AM/nr



Aaron McClintic
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

DHHS

Alison Gordon
430 Barfield Drive
Hastings, MI
49058

Barry County DHHS- via electronic mail

BSC3- via electronic mail

D. Smith- via electronic mail

EQAD- via electronic mail

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED], MI
[REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED] MI
[REDACTED]