



[REDACTED]  
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[REDACTED]  
[REDACTED]

Date Mailed: May 8, 2019  
MOAHR Docket No.: 19-001423  
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, an in-person hearing was held on April 8, 2019, from Detroit, Michigan. The Petitioner was not present but was represented by [REDACTED] Esq. [REDACTED], Petitioner's daughter and Authorized Representative (AR) was also present for the hearing. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist.

**ISSUE**

Did the Department properly delay the assessment of Petitioner's divestment penalty period relating to his Medical Assistance (MA) benefits?

**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 May 31, 2018, Petitioner applied for MA benefits.
2. At the time of application, Petitioner was residing in a Long-Term Care (LTC) facility.
3. On June 5, 2018, Petitioner's home was sold.
4. Also, on June 5, 2018, Petitioner gifted his daughter \$ [REDACTED] and entered into a promissory note with his daughter in the amount of \$ [REDACTED].

5. Because Petitioner had gifted money to his daughter and entered into a promissory note with his daughter, he was subject to a divestment penalty.
6. The Department failed to add the divestment penalty into its computer system.
7. Had the divestment penalty been properly added to the computer system, it would have begun on June 1, 2018 and ended on November 25, 2019.
8. On June 25, 2018, the Department sent Petitioner a Health Care Coverage Determination Notice which notified Petitioner that he was eligible for MA benefits subject to a \$2,873.00 monthly patient pay amount.
9. Petitioner was assigned a new worker.
10. On January 16, 2019, Petitioner's new case worker received an email alerting her that the divestment penalty had never been added to the computer system.
11. On January 17, 2019, the divestment penalty was added, and the Department sent Petitioner a Benefit Notice which notified Petitioner that his divestment penalty would begin on March 1, 2019 and would end on August 25, 2020.
12. On February 14, 2019, Petitioner's counsel 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.

In this case, Petitioner applied for MA benefits on May 31, 2018. At the time of application, Petitioner was residing in an LTC facility. On June 4, 2018, Petitioner gifted his daughter \$ [REDACTED] and entered into a promissory note with his daughter in the amount of \$ [REDACTED]. Petitioner's AHR acknowledged that divestment occurred but objected to the Department delaying the divestment penalty period.

The Department processed Petitioner's application for MA benefits and determined that Petitioner was subject to a 17.83-month divestment penalty. Petitioner's assigned worker at the time of application failed to put the divestment penalty in the system and thus, the penalty period did not begin on June 1, 2018. Petitioner was assigned a new case worker and on January 16, 2019, she received an email alerting her that the divestment penalty had not been applied to the case. Petitioner's new worker added the divestment penalty and sent a Benefit Notice which notified Petitioner that his divestment penalty period began on March 1, 2019 and would continue until August 25, 2019. Had the penalty been added timely and notice been sent, the penalty period would have begun June 1, 2018 and ended on November 25, 2019.

When it is discovered that eligibility was determined incorrectly (regardless of client or agency error), the Department is required to correct the applicable determination, even if it results in a negative action (including closure). BAM 220 (January 2018), p. 2. In this case, Petitioner's assigned worker realized that the divestment penalty had not been added to Petitioner's case. As such, the Department paid for MA benefits for which Petitioner was not otherwise entitled.

Under Department policy, timely notice must be given to LTC recipients and (BEM 106) waiver recipients before actually applying the penalty. BEM 405 (April 2018), p. 15. There is no dispute that Petitioner was a resident in an LTC facility at the time of application. Ms. Tarrance testified that once she became the assigned worker and reviewed the case, she confirmed that the penalty had not been added to Petitioner's case and notice of the penalty had not been sent. As such, because Petitioner was a resident in an LTC, notice was required to be sent prior to the application of the divestment penalty.

An **agency error** is caused by incorrect actions (including delayed or no action) by the Michigan Department of Health and Human Services (MDHHS) staff or department processes. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer errors occurred.
- Information was not shared between department divisions such as services staff.
- Data exchange reports were not acted upon timely. BAM 705 (January 2016), p. 1.

Under Department policy, recoupment of MA benefits due to Agency error is not pursued. BAM 705, p. 3. As such, the Department caused Petitioner to receive benefits for which he was not entitled and thus is precluded from pursuing recoupment.

There is no dispute this error was caused by the Department. The Benefit Notice was sent on January 17, 2019. While the Department was required to provide Petitioner with notice, the notice could have identified the correct penalty period of June 1, 2018

through November 25, 2019. As such, there was approximately ten months remaining in the divestment penalty period at the time notice was sent. ██████████ testified that the computer system would not allow the penalty to be applied retroactively. ██████████ also provided evidence to show that MA benefits were paid on behalf of Petitioner between June 2018 and June 2019. However, Petitioner should not be required to endure a delayed penalty period because of the Department's error.

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 delayed the divestment penalty period from June 1, 2018 through November 25, 2019 to March 1, 2019 through August 25, 2020.

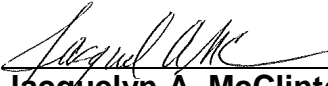
### **DECISION AND ORDER**

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. Apply the divestment penalty from June 1, 2018 through November 25, 2019; and
2. Notify Petitioner, his AR and attorney of its decision in writing.

JAM/tlf

  
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**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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**Via Email:**

[REDACTED]

**Counsel for Petitioner**

- **Via First-Class Mail:**

[REDACTED]

**Petitioner**

- **Via First-Class Mail:**

[REDACTED]