



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
MI

Date Mailed: June 28, 2019  
MOAHR Docket No.: 19-003922  
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 May 23, 2019, from Lansing, Michigan. The Petitioner was represented by Attorney [REDACTED]. The Department of Health and Human Services (Department) was represented by Assistant Attorney General, Leah Brooks. Sara Stellema, Eligibility Specialist, and Mark Logan, Family Independence Manager, appeared and testified for the Department. The parties' Attorneys stipulated to submitting written closing argument and to extending the record and waiving timeliness standards in order to do that. Written closing arguments were received and reviewed. Department Exhibit 1, pp. 1-55 received and admitted. Petitioner Exhibits 1-6 were received and admitted.

**ISSUE**

Did the Department properly determine that Petitioner divested a real estate interest in the amount of \$30,800?

**FINDINGS OF FACT**

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

1. In January 2016, Petitioner entered into a purchase agreement with her grandson [REDACTED] for her home located at [REDACTED] Michigan for \$ [REDACTED]

2. [REDACTED] [REDACTED] completed work on Petitioner's home between January 2016 and September 2016 after Petitioner vacated the home, in anticipation of moving into the home and completing the purchase of the home.
3. On September 20, 2016, Petitioner sold her home located at [REDACTED] Michigan to her grandson [REDACTED] [REDACTED] and his wife [REDACTED] for \$ [REDACTED]
4. On February 20, 2019, Petitioner applied for Medicaid Long Term Care benefits. (Ex.1, pp. 52-55)
5. On February 25, 2019, A verification checklist was issued requesting asset verifications from Petitioner. (Ex.1, pp. 9-12)
6. On March 7, 2019, Petitioner submitted several documents related to the sale of her former home located at [REDACTED] Michigan in response to the verification checklist.
7. The Department determined that Petitioner's "gift of equity" to [REDACTED] [REDACTED] her nephew and buyer of her home, that was listed in the closing documents related to the purchase of the home to be divestment.
8. Petitioner's "gift of equity" was reimbursement to [REDACTED] [REDACTED] for work he completed at [REDACTED] Michigan between January 2016 and September 2016.
9. On April 4, 2019, A Health Care Coverage Determination Notice was issued informing Petitioner that "Your Medicaid was approved effective 2/1/2019-ongoing. However, due to the gift of equity that was given to the buyer at the closing sale of your home you will now have a divestment penalty. This penalty will be served from 02/01/2019-05/19/2019. During this time, you will not be eligible for long term care services." (Ex.1, pp. 48-51)
10. On April 12, 2019, Petitioner requested hearing disputing the finding of divestment and imposition of divestment penalty period.

### **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.

### **Medicaid (MA) ONLY**

Divestment results in a penalty period in MA, not ineligibility. Divestment policy does not apply to Qualified Disabled Working Individuals (QDWI); see Bridges Eligibility Manual 169.

Divestment is a type of transfer of a resource and not an amount of resources transferred.

Divestment means a transfer of a resource (see *resource defined* in this item and in glossary) by a client or his spouse that are all of the following:

- Is within a specified time; see *look back period* in this item.
- Is a transfer for *less than fair market value*; see definition in glossary.
- Is not listed in this item under *transfers that are not divestment*.

**Note:** See *annuity not actuarially sound* and *joint owners and transfers* in this item and BEM 401 about special transactions considered transfers for less than *fair market value*. BEM 405 (pp. 1)

### **LESS THAN FAIR MARKET VALUE**

Less than fair market value means the compensation received in return for a resource was worth less than the fair market value of the resource. 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 (see glossary).

**Note:** Also see *annuity not actuarially sound* in this item.

Compensation must have tangible form and intrinsic value.

Relatives can be paid for providing services; however, assume services were provided for free when no payment was made at the time services were provided. A client can rebut this presumption by providing tangible evidence that a payment obligation existed at the time the service was provided (for example a written agreement signed at the time services were first provided). The policy in Bridges Administrative Manual (BAM) 130 allowing use of best available information or best judgment as verification does not apply.

### **Value of Transferring Right to Income**

When a person gives up his right to receive income, the fair market value is the total amount of income the person could have expected to receive.

Use **EXHIBIT I - LIFE EXPECTANCY TABLE - FEMALE** or **EXHIBIT II - LIFE EXPECTANCY TABLE - MALE** to compute the fair market value of a lifetime income source such as a pension. Base the calculation on the person's sex and age on the date of transfer.

### **Personal Care & Home Care Contracts**

**Personal Care Contract** means a contract/agreement that provides health care monitoring, medical treatment, securing hospitalization, visitation, entertainment, travel/transportation, financial management, shopping, home help or other assistance with activities of daily living.

**Home Care Contract** means a contract/agreement which pays for expenses such as home/cottage/care repairs, property maintenance, property taxes, homeowner's insurance, heat and utilities for the homestead or other real property of the client's. Home Care and Personal Care contracts/agreements may be between relatives or non-relatives. A relative is anyone related to the client by blood, marriage or adoption.

**Note:** When relatives provide assistance or services they are presumed to do so for love and affection and compensation for past assistance or services shall create a rebuttable presumption of a transfer for less than fair market value. Fair market value of the services may be determined by consultation with area businesses which provide such services. Contracts/agreements that include the provision of companionship are prohibited.

All Personal Care and Home Care contracts/agreements, regardless of whether between a client and a relative or a client and a non-relative, must be considered and evaluated for divestment.

Personal Care and Home Care contracts/agreements shall be considered a transfer for less than fair market value unless the agreement meets all of the following:

- The services must be performed after a written legal contract/agreement has been executed between the client and the provider. The contract/agreement must be dated and the signatures must be notarized. The services are not paid for until the services have been provided (there can be no prospective payment for future expenses or services); and
- At the time the services are received, the client cannot be residing in a nursing facility, adult foster care home (licensed or unlicensed), institution for mental diseases, inpatient hospital, intermediate care facility for individuals with intellectual disabilities or be eligible for home and community-based waiver, home health or home help; and
- At the time services are received, the services must have been recommended in writing and signed by the client's physician as necessary to prevent the transfer of the client to a residential care or nursing facility. Such services cannot include the provision of companionship; and
- The contract/agreement must be signed by the client or legally authorized representative, such as an agent under a power of attorney, guardian, or conservator. If the agreement is signed by a representative, that representative cannot be the provider or beneficiary of the contract/agreement.
- MDHHS will verify the contract/agreement by reviewing the written instrument between the client and the provider which must show the type, frequency and duration of such services being provided to the client and the amount of consideration (money or property) being received by the provider, or in accordance with a service plan approved by MDHHS.

Assets transferred in exchange for a contract/agreement for personal services/assistance or expenses of real property/homestead provided by another person after the date of application are considered available and countable assets. BEM 405 (pp.7-8)

### **Transfers for Another Purpose**

As explained in this item, transfers exclusively for a purpose other than to qualify or remain eligible for MA are not divestment. BEM 405, p.11

In this case, Petitioner sold her home located at [REDACTED] Michigan to her grandson, [REDACTED] and his wife [REDACTED] on September 20, 2016. Included in the closing documents related to the sale of the property is a line "Gift of Equity \$ [REDACTED] [REDACTED] had completed work on Petitioner's home, between January 2016 and September 2016, in anticipation of buying the home after Petitioner was admitted into an adult foster care facility. [REDACTED] and Petitioner had entered into a purchase agreement for the sale of the home on January 30, 2016, for a purchase price of \$ [REDACTED] and he began making improvements to the home shortly after that. In order to obtain favorable financing, Petitioner and [REDACTED] agreed that the purchase price would be increased to \$ [REDACTED] to reimburse [REDACTED] for the improvements he did to the home after Petitioner moved out and prior to the sale being completed. The property was appraised prior to the January 2016 purchase agreement to arrive at the \$ [REDACTED] purchase price and was appraised again prior to the September 2016 closing to reflect the work [REDACTED] had done to the home. "Gift of Equity" is a term of art used by realtors and financing companies and does not necessarily mean that a gift of monetary equity is conferred to the buyer. In this case the "gift of equity" compensated [REDACTED] for the work he completed on Petitioner's home, that exchange was for fair market value and was not divestment. BEM 405 If the deal with [REDACTED] for the purchase of the home located at [REDACTED] Michigan had fallen through, Petitioner likely would have reimbursed [REDACTED] for the improvements that he made on the home based on a moral and/or legal obligation.

The Department's argument that Petitioner needed to have a home care contract was unfounded and not supported by that facts in the case or Department policy. BEM 405

In addition, the arrangements that were made regarding the sale of Petitioner's home in January 2016 and September 2016 were not made in anticipation of Petitioner's entry into a long-term care nursing home or in an effort to allow Petitioner to become eligible for MA-LTC. Even assuming arguendo that Petitioner's transaction with [REDACTED] for the purchase of the home was for less than fair market value it was not done in anticipation or in an effort to become eligible for MA-LTC and should be considered a transfer for another purpose and not divestment. (BEM 405, p.11) Those arrangements were made more than 2 years prior Petitioner's application for MA-LTC and Petitioner did not need nursing home level care at that time.

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 found that Petitioner divested assets and imposed divestment penalty period.

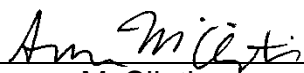
**DECISION AND ORDER**

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.
2. Activate MA-LTC coverage effective February 1, 2019.

AM/nr

  
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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 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

**DHHS**

Kimberly Kornoelje  
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Kent County DHHS- via electronic mail

BSC3- via electronic mail

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EQAD- via electronic mail

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