



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: September 11, 2019  
MOAHR Docket No.: 19-007454  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Janice Spodarek

**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 August 13, 2019, from Lansing, Michigan.

Petitioner appeared but has speech difficulty. Petitioner was represented by [REDACTED] Guardian and Conservator, appointed by Clinton County Probate Court.

The Department of Health and Human Services (Respondent or Department) was represented by Amber Gibson, Hearings Facilitatory, and Lori Reyts, ES.

Petitioner presented the following exhibits admitted into the record:

- 1) Exhibit I.3, August 10, 2019 [REDACTED] [REDACTED] and [REDACTED] [REDACTED] e-mails and accounting statement.
- 2) Exhibit II.26 Petitioner's documentations, photos, and e-mails regarding property transaction and closing.

Petitioner's representative appeared and testified. Petitioner's representative called the following additional witnesses:

[REDACTED] Licensed Electrician  
[REDACTED] Licensed Builder condo purchaser  
[REDACTED] Petitioner's sibling.

The Department presented the following Exhibits admitted into the record:

Department Exhibit A.26, Department documentation.

## ISSUE

Did the Department properly process Petitioner's Medicaid (MA) application and is Petitioner eligible for a hardship exception?

## 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, who is approximately [REDACTED] years old, suffers from terminal Hannington's Disease. Throughout most of his life, Petitioner has not benefited from the public welfare system for assistance. Petitioner worked for the USPS for thirty years. Petitioner has two special needs trusts that were never funded.
2. On or about December 2018 Petitioner reached the level with his disease that he needed around the clock care, and long-term care (LTC) which he entered January 14, 2019. Petitioner has a risk of choking. About this time, Petitioner applied for MA.
3. On May 24, 2019 the Department issued notice approving Petitioner MA with a base line date of January 14, 2019, and with a five-month divestment penalty for selling his condo at less than the FMV in July 2018. The Divestment penalty was for 144 days, from January 14, 2019 through June 7, 2019.
4. On July 20, 2018 Petitioner sold his condo. At the time of the sale, Petitioner's ex-spouse had resided in the condo, causing total disrepair throughout, including damage due to animals, broken windows, appliance replacement, among others. At the time of the sale, Petitioner's representative supplied the best available information and was not informed of the needing an independent third-party assessment of the condo. Exhibit A.1; .25-26.
5. The Department stipulated at the administrative hearing that the initial divestment period was miscalculated by the Department, and that the correct calculation should have been as follows: sale on July 20, 2018 of \$ [REDACTED] outstanding mortgage of \$ [REDACTED] less \$ [REDACTED]. The Department also indicated that it incorrectly accounted for a profit of \$ [REDACTED] as the Department now has verification that Petitioner used this money for his medical care at the LTC facility.
6. On May 29, 2019 the local office asked for a policy exception to the divestment penalty attaching proofs from family members and not a third-party. The exception was denied stating "if there is anything from an objective third-party to use as collateral contact, we could probably approve an exception." Exhibit A.23.
7. Both Department witnesses advocated for a hardship exception from the ALJ arguing that "there was no bad faith" and that Petitioner was not informed of the need to obtain a third-party assessment. The Department accepts the verification

from two sworn witnesses, licensed builder and electrician verifying the value of the condo.

8. At the administrative hearing, sworn testimony was given by two third parties who are licensed with LARA show that the condo sold for \$ [REDACTED] (before costs) and that renovations totaled \$ [REDACTED] Exhibit A.13.
9. Petitioner received a letter from the LTC facility indicating that he is in being threatened with discharge due to a balance in his bill.

### **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, applicable policy regarding divestment is found primarily at BEM 405—MA Divestment. That policy contains a hardship provision which states in part:

Waive the penalty if it creates undue hardship. Assume there is no undue hardship unless you have evidence to the contrary.

Undue hardship exists when the client's physician (M.D. or D.O.) says:

- Necessary medical care is not being provided, and
- The client needs treatment for an emergency condition.

A medical emergency exists when a delay in treatment may result in the person's death or permanent impairment of the person's health.

A psychiatric emergency exists when immediate treatment is required to prevent serious injury to the person or others.  
BEM 405, p 16-17 of 23. Effective 7/1/2019.

After a careful review of the credible and substantial evidence of record, this administrative law judge finds that the evidence of record supports finding that Petitioner is eligible for an undue hardship for the reasons set forth below.

As already noted, the Department indicated that it failed to inform Petitioner of the need to obtain a third-party verification at the time of the application. To this extent, the Department failed to follow its policy in fully informing Petitioner as to what was necessary for verifications pursuant to his LTC MA application in violation of BAM 105, 110, and 115. On this basis alone, the Respondent could be found to have failed to properly process Petitioner's MA application. However, prior to and at the time of the administrative hearing, Petitioner submitted, and the witnesses of record brought forth credible and substantial evidence of the value of the asset(s) at issue which triggered the initial divestment penalty.

Here, Department argued on behalf and for Petitioner that the Department failed to inform Petitioner as required by policy of the need to obtain a third-party verification, that the verification at the time of the initial application submitted was the "best available" as that term is defined under DHHS policy and procedure, and that Petitioner is eligible for a hardship exception. Here, both the Petitioner and the Department appear to be in agreement as to the facts, and, as to the hardship exception.

After a careful review of the substantial and credible evidence of record, the undersigned agrees. It is also noted that the Department's initial divestment period has been reduced, it appears, at least two times due to information now available to the Department. As Petitioner is eligible for the hardship penalty, there is no need to review the specific accounting of the adjustments made by the Department subsequent to the case action herein.

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 Petitioner is eligible for the hardship exception and thus, the Department is reversed and ordered to remove the divestment penalty and issue any supplemental benefits.

It is ordered that the Department's divestment penalty is reversed.

**DECISION AND ORDER**

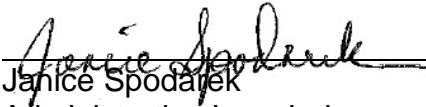
Accordingly, the Department's decision is **REVERSED**.

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. Remove the divestment penalty from Petitioner's case regarding any penalty or subsequent penalty reductions pursuant to Petitioner's LTC MA application reviewed herein, and
2. Issue any supplemental benefits/payments Petitioner and/or the LTC facility is owed as a result of the divestment removal.

IT IS SO ORDERED.

JS/nr

  
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Janice Spodarek  
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**

Amber Gibson  
5303 South Cedar  
PO BOX 30088  
Lansing, MI  
48911

Ingham County DHHS- via electronic mail

BSC2- via electronic mail

D. Smith- via electronic mail

EQAD- via electronic mail

**Authorized Hearing Rep.**

[REDACTED]  
[REDACTED], MI

**Petitioner**

[REDACTED]  
[REDACTED], MI