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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: October 8, 2019
MOAHR Docket No.: 19-009330
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 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 October 3, 2019 from ████████ Michigan. Petitioner did not participate in the hearing, Petitioner's daughter, guardian, and conservator, ██████████ testified and participated as Petitioner's authorized hearing representative (AHR). The Michigan Department of Health and Human Services (MDHHS) was represented by Candace Baker, manager, and Kmbali Carey, specialist.

ISSUE

The issue is whether MDHHS properly imposed a divestment penalty concerning Petitioner's Medicaid eligibility.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. From June 2018 through July 2019, Petitioner's guardian incurred guardianship expenses totaling \$2,242.25.
2. As of June 2019, Petitioner was an ongoing recipient of Medicaid under the category of Extended-Care.
3. As of June 2019, Petitioner had a life insurance policy with a cash surrender value exceeding \$2,000.

4. On July 30, 2019, MDHHS determined Petitioner was subject to a divestment penalty from June 1, 2019, through June 7, 2019, for transferring assets for less than fair market value.
5. On August 19, 2019, Petitioner's AHR requested a hearing to dispute the divestment penalty.

CONCLUSIONS OF LAW

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. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner's AHR requested a hearing to dispute a divestment penalty imposed due to her mother's ongoing Medicaid eligibility. A Health Care Coverage Determination Notice stated that a divestment penalty was imposed from June 1, 2019, through June 7, 2019, due to the transfer of an asset for less than fair market value.

Divestment is a type of transfer of a resource and not an amount of resources transferred. BEM 405 (July 2019), p. 1. Divestment means a transfer of a resource by a client or his spouse that are all of the following:

- Is within a specified time;
- Is a transfer for less than fair market value; and
- Is not listed as a transfer that is not divestment. *Id.*

Divestment results in a penalty period in MA, not ineligibility. *Id.* During the penalty period, MA will not pay the client's cost for long term care (LTC), among other expenses. *Id.*

Petitioner owned a life insurance policy with a cash value of \$1,822.10 as of July 2, 2018. Exhibit A, p. 8. As of July 26, 2019, a letter from the insurance company verified that the life insurance was transferred to Petitioner's spouse; the letter also verified that the life insurance value increased to \$2,043.64. MDHHS testimony stated that divestment was concluded, in part, based on the life insurance cash value exceeding the cash asset limit for Supplemental Security Income (SSI)-Related MA benefits. The asset limit for SSI-related MA benefits is \$2,000. BEM 400 (July 2019), p. 8. Thus, if Petitioner continued to own the life insurance, she may have been ineligible for Medicaid due to excess assets.

Petitioner's AHR responded that Petitioner's life insurance was transferred primarily for the purpose for reimbursing her costs of being guardian and conservator to her mother. Petitioner's AHR testified that she was entitled to receive \$2,242.25 from her duties. Her stated expenses included reimbursement for mileage and a standard conservator monthly fee. Petitioner's AHR testimony was supported by a [REDACTED] County court order dated August 27, 2019, awarding Petitioner's AHR \$2,242.25 for expenses. Exhibit 1, pp. 1-2. The evidence raises two obstacles to imposing a divestment penalty.

For divestment, a client must transfer an asset for less than fair market value. For the value of her life insurance, Petitioner received guardianship and conservatorship services for one year. Per a [REDACTED] County court order, the costs of guardianship and conservatorship exceeded the value of Petitioner's life insurance. A transfer performed to pay costs of guardianship and conservatorship is not a transfer for less than fair market value.

Transfers of assets for a purpose other than divestment are also not subject to divestment penalties. *Id.*, p. 11. Petitioner's AHR credibly testified that the purpose of transferring the value of Petitioner's life insurance was to receive money for her efforts and expenses as guardian/conservator. Wanting to get paid and reimbursed for expenses is a legitimate expectation that would justify a transfer of assets.

Given the evidence, MDHHS did not establish that the transfer of Petitioner's life insurance was divestment. Accordingly, the penalty imposed to Petitioner's Medicaid eligibility was improper.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly imposed a divestment penalty against Petitioner. It is ordered that MDHHS begin the following actions within 10 days of the date of mailing of this decision:

- (1) Remove the divestment penalty from June 1, 2019 through June 7, 2019, against Petitioner; and
- (2) Issue Medicaid benefits improperly not issued to Petitioner.

The actions taken by MDHHS are **REVERSED**.

CG/jaf



Christian Gardocki

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 (via electronic mail)

Courtney Jenkins
MDHHS-Washtenaw-Hearings
BSC4
D Smith
EQAD

Petitioner (via first class mail)

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

Authorized Hearing Rep.
(via first class mail)

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