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GOVERNOR

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

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DIRECTOR

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Date Mailed: December 23, 2019
MOAHR Docket No.: 19-010180
Agency No.: ██████████
Petitioner: ██████████

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, a telephone hearing was held on December 12, 2019, from ████████ Michigan. The Petitioner was represented by Scott Robbins, Esq. Petitioner's daughter, ██████████ appeared on behalf of Petitioner as a witness. The Department of Health and Human Services (Department) was represented by Brian McLaughlin, Assistant Attorney General. Patty Holihan, Eligibility Specialist, appeared on behalf of the Department as a witness.

ISSUE

Did the Department properly determine that Petitioner was subject to a divestment with a penalty period of April 1, 2019 through November 12, 2023?

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 is currently in a Long Term Care (LTC) facility.
2. On or about April 23, 2019, \$392,000.00 was transferred to Petitioner's daughter.
3. On October 4, 2018, Petitioner's daughter also received 99 shares of ██████████ stock with a stock price of \$105.35.
4. Property was transferred to Petitioner's daughter with a taxable value of \$44,633.00.

5. The total amount of the transfer to Petitioner's daughter was \$469,448.20.
6. An additional \$22,440.00 was transferred to someone other than Petitioner's daughter.
7. Petitioner's daughter has not been adjudicated as disabled.
8. On June 20, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice which notified Petitioner that he was subject to a divestment with a penalty period of April 1, 2019 through November 12, 2023.
9. On September 16, 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 State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

In this case, Petitioner is in LTC. On or about April 23, 2019, \$392,000.00 was transferred to Petitioner's daughter. On October 4, 2018, Petitioner's daughter also received 99 shares of ██████████ stock with a stock price of \$105.35. Also, property was transferred to Petitioner's daughter with a taxable value of \$44,633.00. The total amount of the transfer to Petitioner's daughter was \$469,448.20. The Department asserts that the transfer to Petitioner's daughter was a divestment. Petitioner's counsel asserts that the transfer was not a divestment because Petitioner's daughter is disabled. An additional \$22,440.00 was transferred to someone other than Petitioner's daughter. There is no dispute that the \$22,440.00 constitutes a divestment.

Divestment is a type of transfer of a resource and not an amount of resources transferred. Resource means all the client's assets and income. Transferring a resource means giving up all or partial ownership in the resource. Cash in bank accounts is an asset. Thus, giving away cash, is divestment. Divestment results in a penalty period, not MA program ineligibility. BEM 405 (January 2019), pp. 1-2. BEM 400 (February 2019), p.1. During the penalty period, MA will not pay the client's cost for: LTC services; home and community-based services; home help; or home health. MA will pay for other MA-covered services. BEM 405, p.1. A divestment is a transfer of a resource by a client that

is (i) within a specified time (the look-back period), (ii) for less than fair market value (FMV), and (iii) not an excluded transfer. BEM 405, p. 1.

To determine if an asset transfer qualifies as divestment, the baseline date must first be established. A person's baseline date is the first date that the client was eligible for MA and one of the following: in LTC; approved for the waiver; eligible for home health services; or eligible for home help services. BEM 405, p. 6. Transfers that occur on or after a client's baseline date must be considered for divestment. In addition, once the baseline date is established, the Department will determine the look-back period, which is 60 months prior to the baseline date for all transfers made after February 8, 2006. BEM 405, p. 5.

Petitioner's daughter was employed with the [REDACTED] from 1993 to 2008. Petitioner applied for and received disability retirement under the Federal Employees Retirement System. The letter of approval instructed Petitioner to apply for Social Security Benefits. The letter goes on to state as follows:

If the Social Security Administration awards you monthly benefits, you must immediately notify us of the amount and the effective date of the monthly benefit amount.

By the use of "if", it is understood that although Petitioner's daughter qualified for FERS, she may or may not be determined disabled by the Social Security Administration. The letter does not state that Petitioner is disabled an unable to work.

Petitioner's counsel asserts that under the Department policy, there is no way for her to be adjudicated as disabled because the SSA will not assess her medical conditions because the household income exceeds the allowable limit. Petitioner's daughter is also not a resident of Michigan; and therefore, any application for Michigan State Disability Assistance would also be denied. Under Department policy, a transfer to the client's blind or disabled (see BEM 260) child, regardless of the child's age or marital status, are **not** divestment. This includes transfers to a trust established SOLELY FOR THE BENEFIT OF the child. BEM 405 (January 2019), p. 9.

Petitioner's daughter provided testimony regarding her medical condition and limitations. At the hearing, a letter from Petitioner's daughter's treating physician which presented and stated as follows:

...She does suffer from temporal lobe epilepsy and had her last seizure two years ago. She has attempted to work on many occasions and has had to discontinue her occupation which involved driving. The patient has recently developed episodes of confusion and we will be further evaluating that.

Pursuant to the finding of cervical spinal stenosis, she has a narrowing of the mid cervical spinal canal without long tract signs. This could create a vulnerability to

injury and, thus, heavy occupations should be avoided. The pineal cyst is an incidental finding on her MRI examination and will be followed over time.

The most important finding regarding her disability is one of intermittent confusion at this time. We will seek to determine the nature and cause of this and whether it relates to her history of temporal lobe epilepsy...


Although the letter from Petitioner's treating physician discusses her medical conditions, it does not state that she is disabled. In fact, the letter specifically states that heavy occupations (not all) should be avoided. The letter indicated that Petitioner's daughter was forced to end employment requiring driving but does not state that she cannot maintain employment that does not require driving. None of Petitioner's medical records were presented for admission at the hearing. Petitioner confirmed that she had not applied for any disability in her home state of Indiana. Because there was not a finding that Petitioner's daughter was disabled at the time of the transfer or since that time, it is found that the Department properly determined that the transfers to Petitioner's daughter were divestments. The calculations relating to the divestments were not challenged at the hearing.

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 acted in accordance with Department policy when it determined that Petitioner was subject to a divestment penalty from April 1, 2019 through November 12, 2023.

DECISION AND ORDER

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

JAM/jaf



Jacquelyn A. McClinton
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

