



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

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Date Mailed: December 6, 2018
MAHS Docket No.: 18-008742
Agency No.: ██████████
Petitioner: ██████████ ██████████

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, an In-person hearing was held on November 14, 2018, from Munising, Michigan. The Petitioner was represented by her attorney ██████████ ██████████ from Legal Services of Northern Michigan. Petitioner's son and Power of Attorney ██████████ ██████████ appeared and testified. The Department of Health and Human Services (Department) was represented by AP Supervisor Lisa Holbrook. Corey Cromell AP Specialist also appeared and testified. Department Exhibit 1, pp. 1-23 was received and admitted.

ISSUE

Did the Department properly determine that divestment occurred and properly impose a divestment penalty period?

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 ██████████, 2018, Petitioner applied for Medical Assistance- Long Term Care (MA-LTC).
2. On ██████████, 2018, a Health Care Coverage Determination Notice was sent to Petitioner informing her that she was approved for MA-LTC with a divestment penalty in effect from ██████████, 2018, through ██████████, 2018. (Ex. 1, pp. 8-11)
3. On ██████████, 2018, Petitioner requested hearing disputing the finding of divestment and imposition of divest penalty period.

4. On [REDACTED], 2018, Petitioner quit claimed her interest in a parcel of real estate that was not her primary residence. Petitioner received no compensation for the transfer.
5. Petitioner's ownership interest in the parcel of real estate that she deeded to her children was valued at \$ [REDACTED]
6. The Department calculated a divestment penalty period of 25 days.

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.

FIP, RCA, SDA, G2U, G2C, RMA, SSI-Related MA Only and CDC

Jointly owned real property is only excludable if it creates a hardship for the other owners.

Note: In SSI-related MA a divestment has occurred if joint owners are added during the five year look back period. See BEM 405, MA DIVESTMENT for determination of a divestment penalty.

Ownership documents for jointly owned real property commonly use one of four phrases:

- **Joint Tenancy:** no owner can sell unless all owners agree.
- **Joint Tenancy with Right of Survivorship:** no owner can sell unless all owners agree.
- **Tenancy by the Entirety:** same as joint tenancy except the owners are husband and wife. Neither owner can sell unless both owners agree.
- **Tenancy-in-Common:** each owner can sell their share without the other owner's agreement.

Note: For jointly owned real property count the individual's share unless sale of the property would cause undue hardship. Undue hardship for this item is defined as: a co-owner uses the property as his or her principal place of residence **and** they would have to move if the property were sold **and** there is no other readily available housing. BEM 400 (5/1/2018)

DEPARTMENT POLICY

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 below 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 below 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.

During the penalty period, MA will **not** pay the client's cost for:

- Long Term Care (LTC) services.
- Home and community-based services.
- Home help.
- Home health.

MA will pay for other MA-covered services. BEM 405 (4/1/2018)

In this case, Petitioner had previously been a recipient of MA-LTC benefits. Petitioner jointly owned a parcel with her children that was not counted, based on Department policy at that time, when Petitioner began receiving MA-LTC benefits. When the Department discovered that Petitioner owned the real estate jointly, but it would not be a hardship to sell the property, the Department determined that it was a countable asset and took action to close Petitioner's case. BEM 400 The determination that the real

estate was now countable was based on a change in Department policy. Petitioner subsequently deeded her interest in the property to her children on [REDACTED], 2018, without compensation, in essence giving away her interest. Petitioner reapplied for MA-LTC on [REDACTED], 2018, and she was approved for MA-LTC, but the Department determined that divestment occurred due to Petitioner having deeded her interest in the parcel of real estate without receiving compensation. The value of Petitioner's ownership interest in the real estate parcel was \$ [REDACTED]. Based on monthly long-term care cost of \$ [REDACTED] a divestment penalty period of 25 days was imposed. BEM 405 This was proper and correct and consistent with Department policy.

Petitioner's son questioned why the divestment penalty was imposed if Petitioner was not given notice of the policy change that made the jointly held real estate a countable asset. Petitioner's son questioned why his mother was not given an opportunity to become asset eligible when the policy change regarding jointly held assets went into effect. Petitioner's son pointed out that the property was disclosed at the initial application and that it was Department oversight that permitted Petitioner's continued eligibility despite the change in policy. That error was in Petitioner's favor. Department policy did not require that Petitioner be given notice of the change in policy related to joint ownership and did not require that Petitioner be given an opportunity to become asset eligible.

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 made a determination of divestment and imposed divestment penalty period of 25 days.

DECISION AND ORDER

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

AM/nr



Aaron McClintic
Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System (MAHS).

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

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

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

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

DHHS

Lee Harris
413 Maple Street
Munising, MI 49862

Alger County DHHS- via electronic mail

BSC1- via electronic mail

D. Smith- via electronic mail

EQAD- via electronic mail

Petitioner

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

Authorized Hearing Rep.

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

Petitioner's Attorney

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