



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: May 14, 2019  
MOAHR Docket No.: 18-013522  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 May 9, 2019, from Detroit, Michigan. The Petitioner was represented by [REDACTED], daughter and Authorized Hearing Representative (AHR). The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist.

### **ISSUE**

Did the Department properly determine that Petitioner was eligible for Medical Assistance (MA) benefits subject to 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 August 1, 2018, Petitioner's husband transferred \$24,736.83 from his account to his daughter, [REDACTED] account.
2. [REDACTED] is also Petitioner's daughter.
3. On August 6, 2018, an application was submitted to the Department on behalf of Petitioner.
4. On October 16, 2018, the Department sent Petitioner a Health Care Coverage Determination Notice which notified Petitioner that she had been approved for MA benefits subject to a divestment penalty period.

5. On December 3, 2018, Petitioner's AHR 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 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.

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 (April 2018), 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.

In this case, Petitioner applied for MA benefits on August 6, 2018. At the time of application, Petitioner was in an LTC. Absent any other evidence, Petitioner's baseline date is August 6, 2018. As such, any transfers that occurred on or after August 6, 2018 as well as any transfers that occur 60 months prior to that date is subject to a divestment penalty.

Petitioner's daughter does not dispute that \$24,736.83 was transferred from her father's account to her personal account. [REDACTED] testified that because Petitioner's money was in a separate banking account with no other joint account holders, it made it difficult to access Petitioner's money to care for her needs. [REDACTED] indicated that the bank instructed her to have money transferred from her father's account to her personal account to avoid the same scenario in the future relating to her father. As a result, Petitioner's father authorized the transfer from his account to her personal account.

During the hearing, it was noted that [REDACTED] was a joint owner on her father's account and as such, the transfer may not have been necessary. Notwithstanding this, under Department policy, when a client jointly owns a resource with another person(s),

any action by the client or by another owner that reduces or eliminates the client's ownership or control is considered a transfer by the client. BEM 405, p. 3. [REDACTED] testified that the money transferred from her father's account to her account belonged to her father. As such, the transaction is considered a transfer. It is therefore found that the Department has established that a divestment has occurred.

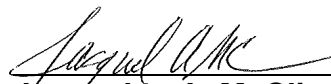
Because the Department established that a divestment occurred, an analysis of the computation of the applicable penalty period follows. The Department determined that Petitioner was eligible for MA, but subject to a divestment penalty for the period between August 1, 2018 through October 29, 2018. The Department stated that in computing the penalty period, it relied on the \$24,736.83 in cash asset transfer Department policy provides that the penalty period is computed based on the total uncompensated value of all resources divested, which in this case is the cash value. Once the total uncompensated value is determined, the Department is to divide that amount by the average monthly private LTC Cost in Michigan, which is based on the client's baseline date. This gives the number of full months for the penalty period. The fraction remaining is multiplied by 30 to determine the number of days for the penalty period in the remaining partial month. BEM 405, pp. 12-15. Applying Department policy to Petitioner's case, based on a \$24,736.83 total uncompensated value of the divested resources and an \$8,261.00 average monthly private LTC cost in Michigan applicable to Petitioner's 2018 baseline date, the divestment penalty is 2 months and 29 days. Therefore, upon review, the Department properly applied a divestment penalty from August 1, 2018 through October 29, 2018.

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 eligible for MA benefits subject to a 2 month 29 day divestment penalty period.

### **DECISION AND ORDER**

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

JAM/tlf



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**Jacquelyn A. McClinton**  
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

**Via Email:**

MDHHS-UPSChearings  
BSC1 Hearing Decisions  
EQAD  
D. Smith  
MOAHR

**Authorized Hearing Rep.**

- **Via First-Class Mail:**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner**

- **Via First-Class Mail:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]