



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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

Date Mailed: September 12, 2019  
MOAHR Docket No.: 19-007520  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Carmen G. Fahie

### **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. The Petitioner was represented by Attorney [REDACTED], P# [REDACTED]. The Department of Health and Human Services (Department) was represented by Maxine Coleman, Long Term Care Eligibility Specialist.

### **ISSUE**

1. Did the Department properly determine the divestment penalty for Medical Assistant (MA)?

### **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 [REDACTED] [REDACTED] 2019, Petitioner applied for MA Long Term Care (LTC) with a retroactive application, where she reported a purposeful divestment of \$33,284.00 to an irrevocable trust. Department Exhibit 1, pgs. a-h.
2. On June 8, 2019, the Department Caseworker sent Petitioner a Health Care Coverage Determination Notice, DHS-1606, indicating that Petitioner was eligible for MA for the month of July 1, 2019, so she was not eligible for MA Cost Share. Department Exhibit 1, pg. 13.
3. On July 1, 2019, the Department received a hearing request from Petitioner's Attorney, contesting the Department's negative action.

## **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.

BEM 405, pgs. 14-15

### **Computing Penalty Period**

The penalty period starts on the date which the individual is eligible for Medicaid and would otherwise be receiving institutional level care (LTC, MIChoice waiver, or home help or home health services), and is not already part of a penalty period. When a medical provider is paid by the individual, or by a third party on behalf of the individual, for medical services received, the individual is not eligible for Medicaid in that month and the month is not a penalty month. That month cannot be counted as part of the penalty period. This does not include payments made by commercial insurance or Medicare.

**Note:** If a past unreported divestment is discovered or an agency error is made which should result in a penalty, a penalty must be determined under the policy in place at the time of discovery. If a penalty is determined for a transfer in the past, apply the penalty from the first day after timely notice is given; see Recipient Exception in this item.

### **Recipient Exception**

Timely notice must be given to LTC recipients and (BEM 106) waiver recipients before actually applying the penalty. Adequate notice must be given to new applicants.

In this case, Petitioner reported the intentional divestment when she applied for MA LTC on [REDACTED] 2019. As a result, the Department was put on notice of the divestment and the amount on [REDACTED] 2019. The Department may have put a divestment penalty on the system of March 1, 2019, through June 30, 2019, but just made her eligible for MA effective July 1, 2019. However, the notice is silent on the issue. The amount divested was \$33,284.00, which should result in a divestment penalty of 3 months and 27 days. The divestment did start when Petitioner reported to the Department the intentional divestment on [REDACTED] 2019. However, the Department failed to budget Petitioner's son paying her back on a loan of \$23,517.36 based on a promissory note from April 5, 2019, through July 5, 2019, in the amount of \$5,879.34. BEM 405.

This Administrative Law Judge notes that the divestment penalty date should be [REDACTED] 2019, when Petitioner reported the intentional divestment to the Department with her application filed on [REDACTED] 2019. Petitioner has a divestment penalty from March 1, 2019, through June 30, 2019. In addition, she received payment from a promissory note from April 5, 2019, through July 5, 2019, of \$5,879.34 monthly. The loan payment on July 5, 2019, would give her excess assets for the month of July 2019 and she would not be eligible for MA LTC.

### **DECISION AND ORDER**

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 did not act in accordance with Department policy when it failed to start the divestment penalty date from [REDACTED] 2019 when the Petitioner reported the intentional divestment to the Department with her application filed on [REDACTED] 2019. Petitioner has a divestment penalty from March 1, 2019, through June 30, 2019. In addition, she received payment from a promissory note from April 5, 2019, through July 5, 2019, of \$5,879.34 monthly. The loan payment in July 5, 2019, would give her excess assets for the month of July 2019 and she would not be eligible for MA LTC.

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. Initiate a BRIDGES FIX IT ticket to implement a divestment penalty period of March 1, 2019, through June 30, 2019, for a MA LTC application filed on March 28, 2019, with an intentional divestment. Petitioner is eligible for MA LTC for the month of August 2019, due to the repayment of a promissory note of \$5,879.34 on July 5, 2019, which gives her excess assets for the month of July 2019.

2. Based on policy, the Department should provide Petitioner with written notification of the Department's revised eligibility determination and issue Petitioner any retroactive benefits she may be eligible to receive, if any.

CF/hb



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**Carmen G. Fahie**  
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

