



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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██████████, MI ██████████

Date Mailed: July 31, 2020  
MOAHR Docket No.: 20-003964  
Agency No.: ██████████  
Petitioner: ██████████ ██████████

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

**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. After due notice, telephone hearing was held on July 15, 2020, from Lansing, Michigan. Petitioner was represented by ██████████ ██████████ and ██████████ ██████████. The Department was represented by Cassandra Burch and Lianne Scupholm.

**ISSUE**

Did the Department of Health and Human Services (Department) properly determine that long term care benefits are subject to a divestment penalty?

**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 January 14, 2020, the Department received verification of withdrawals totaling \$██████████ from Petitioner's 401k retirement account and that the account had been closed. Exhibit A, pp 3-6.
2. On January 14, 2020, the Department received verification of expense obligations totaling paid with Petitioner's cash assets. Exhibit A, pp 7-68 and 80-91.
3. The Department received a copy of an expense invoice for personal services provided to Petitioner by his authorized representative. Exhibit A, pp 139-140.
4. On February 21, 2020, the Department notified Petitioner that he was eligible for Medical Assistance (MA) effective February 1, 2020, but that there would be a

divestment penalty from February 19, 2020, through May 23, 2020, applicant against his Long Term Care (LTC) and/or waiver services. Exhibit A, pp 75-77.

5. On March 19, 2020, the Department received Petitioner's request for a hearing protesting the divestment penalty applied towards his Medical Assistance (MA). Exhibit A, pp 73-74.

### **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.

Assets means cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. Personal property is any item subject to ownership that is not real property. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (January 1, 2018), pp 1-7.

Divestment results in a penalty period in MA, not ineligibility. Divestment is a type of transfer of a resource and not an amount of resources transferred. Divestment means a transfer of a resource by a client or his spouse that are all of the following:

- Is within a specified time, which is 60 months prior to placement in an LTC facility.
- Is a transfer for less than fair market value.
- Is not listed below under transfers that are not divestment.

Department of Health and Human Services Bridges Eligibility Manual (BEM) 405 (January 1, 2020), pp 1-6.

Petitioner applied for MA benefits and long-term care waiver services. On February 21, 2020, the Department determined that Petitioner met the countable asset criteria to receive MA benefits.

Petitioner had provided the Department with verification of his cash assets and how these assets were disposed of during the 60 months before requesting waiver services. The Department determined that unverified cash assets that were disposed of but not verified met the Department's definition of divestment. The divested amount of \$27,405 resulted in a 3-month 5-day divestment penalty, which was determined by dividing the divested amount by the monthly cost of long-term care as directed by BEM 405.

Petitioner's authorized hearing representative did not dispute the Department's determination of the divestment penalty but disputed the Department's refusal to count certain personal expenses charged by the representative to Petitioner.

The Department does not dispute that Petitioner's authorized representative and his spouse provided personal services to Petitioner or that those services were necessary.

However, it is Department policy that when relatives provide assistance or services they are presumed to do so for love and affection and compensation for past assistance or services shall create a rebuttable presumption of a transfer for less than fair market value. BEM 405, p 7. In order to rebut the presumption of a transfer for less than fair market value, the services provided must be verified by a signed written contract that was notarized before the services were provided. The Department does not dispute that Petitioner's treating physician would have recommended the services or that they were necessary. Since Petitioner was unable to verify that the expenses with a signed notarized contract, Petitioner has failed to rebut that the transfer was not for less than fair market value.

Petitioner's representative also argued that the Department failed to notify him of the policies concerning asset transfers and he would have obtained the necessary documentation if he had been notified of those policies.


The Department has a duty to inform clients of available programs and to assist clients who ask for assistance with completing forms and gathering verification documents. The Department is not required to provide financial advice or provide advise concerning attempts by clients to maximize their eligibility for public benefits. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (October 1, 2019), pp 1-21.

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's Medical Assistance (MA) benefits would be subject to a divestment penalty.

**DECISION AND ORDER**

Accordingly, the Department's decision is AFFIRMED.

KS/nr

  
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Kevin Scully  
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**

Carisa Drake  
190 East Michigan  
Battle Creek, MI  
49016

Calhoun County DHHS- via electronic mail

BSC3- via electronic mail

D. Smith- via electronic mail

EQAD- via electronic mail

**Authorized Hearing Rep.**

[REDACTED] - via first class mail  
[REDACTED]  
[REDACTED], MI  
[REDACTED]

**Petitioner**

[REDACTED] - via first class mail  
[REDACTED]  
[REDACTED], MI  
[REDACTED]