



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], MI [REDACTED]

Date Mailed: September 11, 2020  
MOAHR Docket No.: 20-004054  
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, 2020, from Lansing, Michigan. Petitioner was represented by his wife, [REDACTED], Cathy Timmons, court appointed conservator, and Christina Martin, P#76577. The Department of Health and Human Services (Department) was represented by the Assistant Attorney General, H. Daniel Beaton, Jr. P#43336, Amber Gibson, Hearing Facilitator, and Katie Eschtruth, Eligibility Specialist.

### **ISSUE**

Did the Department properly determine Petitioner was not eligible for Medical Assistance (MA) for Long Term Care (LTC) due to divestment?

### **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] 2020, Petitioner applied for MA LTC. Department Exhibit 1, pgs. 4-7.
2. On March 16, 2020, the Department Caseworker imposed a divestment penalty of \$ [REDACTED] which resulted in delayed MA eligibility until after December 16, 2020. Department Exhibit 1, pgs. 8-53.
3. On March 16, 2020, the Department Caseworker sent the Petitioner a Health Care Coverage Determination Notice, DHS-1606, that he was eligible for MA from

January 1, 2020, ongoing with a \$ [REDACTED] monthly patient pay amount, but MA would not pay for LTC from January 1, 2020, through December 16, 2020, because he or his spouse transferred assets or income for less than their fair market value. Department Exhibit 1, pgs. 54-56.

4. On [REDACTED] [REDACTED] 2020, the Department received a hearing request from Petitioner, 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.

In this case, Petitioner applied for MA LTC on [REDACTED]. Department Exhibit 1, pgs. 4-7. On March 16, 2020, the Department Caseworker imposed a divestment penalty of \$ [REDACTED] which resulted in delayed MA eligibility until after December 16, 2020. Department Exhibit 1, pgs. 8-53. On March 16, 2020, the Department Caseworker sent Petitioner a Health Care Coverage Determination Notice, DHS-1606, that he was eligible for MA from January 1, 2020, ongoing with a \$ [REDACTED] monthly patient pay amount, but MA would not pay for LTC from January 1, 2020, through December 16, 2020, because he or his spouse transferred assets or income for less than their fair market value. Department Exhibit 1, pgs. 54-56. On [REDACTED] [REDACTED] 2020, the Department received a hearing request from Petitioner, contesting the Department's negative action. BAM 130 and 220. BEM 400 and 405.

According to the Department, Petitioner and his wife spent \$ [REDACTED] over the past three years where the look back period was five years for MA eligibility. Petitioner's wife said that the money was spent on providing for their grandchildren. However, Petitioner and his wife's grandchildren were not a part of their household group composition. The money spent on the grand children were a gift and transferred for less than fair market value. Petitioner's Attorney countered that they did not know that Petitioner would require LTC when the money was spent on the grandchildren, but that is a risk that they take when they expended funds and the five year look back period. As a result, the Department properly determined that Petitioner divested income for less than fair

market value based on the five year look back policy for MA eligibility resulting in a divestment penalty of 11 months and 16 days.

**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 acted in accordance with Department policy when it determined that Petitioner had a divestment penalty of 11 months and 16 days due to a \$ [REDACTED] expenditure for less than fair market value.

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

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

**DHHS**

Ingham County via electronic mail

BSC2 via electronic mail

D. Smith via electronic mail

EQADHShearings via electronic mail

**Counsel for Respondent**

H. Daniel Beaton, Jr., AAG via electronic mail

**Counsel for Petitioner**

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**Petitioner**

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

**Authorized Hearing Rep.**

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