



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: November 12, 2020
MOAHR Docket No.: 20-005907
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 October 14, 2020, from Lansing, Michigan. The Petitioner was represented by her son, [REDACTED] and [REDACTED], owner of the funeral home. The Department of Health and Human Services (Department) was represented by Carly Osclund, Assistance Payments Supervisor.

ISSUE

Did the Department properly determine Petitioner's eligibility for Medicaid Assistance (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], Petitioner applied for MA Long Term Care (LTC). Department Exhibit 1, pgs. 5-8.
2. On January 31, 2020, the Department received verification of funeral contracts. Department Exhibit 1, pgs. 12-23.
3. On February 3, 2020, the Department Caseworker sent Petitioner a Verification Checklist, DHS-3503, requesting additional information and clarification that was due on February 13, 2020. Department Exhibit 1, pgs. 9-10.

4. On February 4, 2020, the Department received written verification for DHS-8As. Department Exhibit 1, pg. 11.
5. On February 13, 2020, Petitioner's son, [REDACTED], came into the local office to add the signature line that he was the Designated Power of Attorney for Petitioner.
6. On March 10, 2020, the Department Caseworker sent Petitioner a Health Care Coverage Determination Notice, DHS-1606, that she was eligible retroactive to January 1, 2020, with a monthly patient pay of \$1,437.00, but due to divestment of \$25,320.00 for the funeral contracts Medicare will not pay for LTC from January 1, 2020, through March 28, 2020. Department Exhibit 1, pgs. 24-29.
7. On March 19, 2020, the Department Caseworker received additional corrected funeral contracts of 8As were received. Department Exhibit 1, pgs. 30-41.
8. On June 2, 2020, the Department Caseworker sent Petitioner a Benefit Notice, DHS-176, that stated that she was eligible for MA from January 1, 2020, but per BEM 405 that the divestment penalty ended when the required verifications were received on March 19, 2020. Department Exhibit 1, pgs. 42-43.
9. On August 27, 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 Long Term Care (LTC) on January 21, 2020. Department Exhibit 1, pgs. 5-8. On January 31, 2020, the Department received verification of funeral contracts. Department Exhibit 1, pgs. 12-23. On February 3, 2020, the Department Caseworker sent Petitioner a Verification Checklist, DHS-3503, requesting additional information and clarification that was due on February 13, 2020. Department Exhibit 1, pgs. 9-10. On February 4, 2020, the Department received written verification for 8As. Department Exhibit 1, pg. 11.

On February 13, 2020, Petitioner's son, [REDACTED], came into the local office to add the signature line that he was the Designated Power of Attorney for Petitioner. On March 10, 2020, the Department Caseworker sent Petitioner a Health Care Coverage Determination Notice, DHS-1606, that she was eligible retroactive to January 1, 2020, with a monthly patient pay of \$1,437.00, but due to divestment of \$25,320.00 for the funeral contracts Medicare will not pay for LTC from January 1, 2020, through March 28, 2020. Department Exhibit 1, pgs. 24-29.

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Resources Returned

Cancel a divestment penalty if either of the following occurs before the penalty is in effect:

- All the transferred resources are returned and retained by the individual.
- Fair market value is paid for the resources.

Recalculate the penalty period if either of the following occurs while the penalty is in effect:

- All the transferred resources are returned.
- Full compensation is paid for the resources.

Use the same per diem rate originally used to calculate the penalty period.

Once a divestment penalty is in effect, return of, or payment for, resources cannot eliminate any portion of the penalty period already past. However, recalculate the penalty period. The divestment penalty ends on the later of the following:

- **The end date of the new penalty period.**
- **The date the client notified you that the resources were returned or paid for.**

During the hearing, [REDACTED] said that the wrong information was submitted on the funeral contracts previously. The corrected information was provided to the Department on March 19, 2020. The Department had implemented a divestment penalty from January 1, 2020, until March 28, 2020. The correct funeral contracts were not received to the Department until March 19, 2020, which made Petitioner eligible for MA on that date of March 19, 2020. Because of Department policy in BEM 405, the period of the divestment penalty already past cannot be returned to Petitioner of MA eligibility from January 1, 2020, through March 18, 2020.

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 was not eligible for MA benefits until the correct funeral contracts were received on March 19, 2020. The divestment penalty served from January 1, 2020, until March 18, 2020 cannot be changed.

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

CF/hb



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

Marquette County, DHHS

BSC1 via electronic mail

D. Smith via electronic mail

EQADHShearings via electronic mail

Petitioner

[REDACTED], MI [REDACTED]

Authorized Hearing Rep.

[REDACTED], MI [REDACTED]