



penalty period for Petitioner going back to the date Petitioner reported the return of divested assets.

5. On December 16, 2020, an email was sent to Petitioner's attorney from Chrissie Johnston that reads as follows: "Upon the hearing decision, we sought out DHHS policy in our next steps. It was decided that because the return of all the monies was not given to the institutionalized spouse, the penalty period is unable to be shortened." (Ex. 1, p.20)
6. On December 17, 2020, Petitioner requested hearing disputing the recalculation of divestment penalty period.

### **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.

#### **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. BEM 405

In this case, the assets that Petitioner divested were returned to the Vandeneeden Trust on January 20, 2020. On January 20, 2020, Petitioner was not a trustee or trustor of the

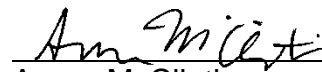
Vandeneeden trust. The resources were not returned or retained to the Petitioner therefore the criteria in BEM 405 for Resources Returned were not met. Therefore, the Department's position that the divestment penalty period could not be recalculated was proper and correct and consistent with Department policy. BEM 405

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 recalculated Petitioner's divestment penalty period.

**DECISION AND ORDER**

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

AM/nr



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Aaron McClintic  
Administrative Law Judge  
for Elizabeth Hertel, 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

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