



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 8, 2017
MAHS Docket No.: 17-011654
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 10, 2017, from Lansing, Michigan. Petitioner was represented by Attorney Jim Thomas. The Department of Health and Human Services (Department) was represented by Assistant Attorney General Geraldine Brown. Laura Joiner, AP Supervisor, and Shelly Slavings, ES, appeared and testified for the Department. Department Exhibit 1, pp. 1-339 was received and admitted.

ISSUE

Did the Department properly determine that divestment occurred and impose a divestment penalty period?

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], 2017, Petitioner applied for Medicaid-LTC.
2. On August 22, 2017, Petitioner was approved for Medicaid-LTC for July 1, 2017, and ongoing.
3. The Department determined that Petitioner's \$100,000 donation to Saginaw Valley State University made in January 2017 was divestment.

4. The Department determined that divestment of \$100,000 had been made. Petitioner was assessed a divestment penalty period from July 1, 2017, through July 14, 2018.
5. On September 1, 2017, Petitioner requested hearing disputing the determination of divestment and imposition 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.

Transfers for Another Purpose

As explained below, transfers exclusively for a purpose other than to qualify or remain eligible for MA are **not** divestment.

Assume transfers for less than fair market value were for eligibility purposes until the client or spouse provides convincing evidence that they had no reason to believe LTC or waiver services might be needed. BEM 405 p.11 (July 2016)

In this case, Petitioner's wife made a \$100,000 donation to Saginaw Valley State University in January 2017 to set up a scholarship. Petitioner's wife's son had died on August 8, 2016. Petitioner's wife inherited \$100,000 from her son's estate. The donation to the university was made to honor the memory of her son who had been an instructor at the university.

Petitioner had been diagnosed with ALS in 2015 and at the time of the donation in January 2017, he was in good health and performing all of his own grooming, showering and dressing. Petitioner's wife credibly testified at hearing that their intention in January 2017, was for Petitioner to remain in the marital home for the foreseeable future. Petitioner's health rapidly deteriorated in March and April 2017 and he was admitted into a nursing home in May 2017. Petitioner's contention is that the donation to SVSU in

January 2017 was made for another purpose other than to qualify or remain eligible for Medicaid, specifically to honor his wife's deceased son, and thus should not be divestment pursuant to BEM 405 p.11.

The Department position is that Petitioner had a diagnosis of ALS which can be a debilitating disease and that it was foreseeable in January 2017 that Petitioner may need nursing home care. The Department cites BEM 405 p.11 which provides: "Assume transfers for less than fair market value were for eligibility purposes until the client or spouse provides convincing evidence that they had no reason to believe LTC or waiver services might be needed."

In assessing whether the donation to the University was made for another purpose the timing should be looked at closely. Petitioner's wife made the donation within 5 months of her son's death and shortly after his estate was settled. The short time frame is consistent with the purpose Petitioner's wife testified to at hearing. The other aspect of the timing that should be examined is the amount of time that lapsed between the donation and when Petitioner entered a nursing home. Approximately 4 months lapsed between when the donation was made and when Petitioner entered a nursing home. If only a month or two had elapsed or if there was any indication that Petitioner's health was declining rapidly then the donation would be more suspicious. It should also be noted that Petitioner's wife received very little if any monetary gain from the donation to the university. If the gift had been made to a relative or some other individual who potentially could have funneled the money back to Petitioner or his wife in the future that would have also raised suspicions. The timing of the donation as well as the nature of the donation leads to the conclusion that it was made for another purpose other than to qualify for Medicaid. Petitioner's wife's testimony at hearing that the donation was made to honor her son's legacy was credible. Therefore, divestment did not occur. BEM 405 p.11

The Department's contention that Petitioner's illness was potentially debilitating and that Petitioner had reason to believe LTC might be needed is understandable based on how the policy is written. However, it would be difficult for almost any elderly person who was not in perfect health to show convincing evidence that they had no reason to believe LTC might be needed.

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 determined that divestment occurred and imposed divestment penalty period.

DECISION AND ORDER

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. Lift the divestment penalty.
2. Activate MA-LTC coverage going back to July 1, 2017.

AM/md



Aaron McClintic

Administrative Law Judge

for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

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