



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

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

Date Mailed: February 8, 2019
MAHS Docket No.: 18-010892
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 January 2, 2019, from Detroit, Michigan. The Petitioner was represented by [REDACTED] her Authorized Hearing Representative (AHR). The Petitioner did not appear at the hearing. The Department of Health and Human Services (Department) was represented by Pamela Herman, Hearing Facilitator, Cassandra Burch, Eligibility Specialist, and Terri Waterman, Assistance Payments Supervisor.

ISSUE

1. Did the Department properly determine that a divestment occurred resulting from the sale of a home by Petitioner's Special Needs Trust?
2. Did the Department properly determine that the cash disbursements from the Petitioner's Special Needs Trust were a 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. An MIChoice Waiver Redetermination was scheduled for Petitioner for August 2018. The Petitioner is disabled. The Petitioner receives in-home nursing care. (Exhibit A, pp. 83-91.)
2. On August 30, 2018, in conjunction with the Redetermination and Divestment Review, the Department sent the Petitioner a Verification Checklist (VCL) with a

September 10, 2018, due date. The VCL sought the following information: "House deed from 2011 for Property [REDACTED] Land Contract on Above Property and Complete Copy of Sale Documents, Those submitted are incomplete. Verifications of all Cash Withdrawals from Special Needs Trust Account from October 2017 to December 2017 when money from sale was depleted, this totals \$ [REDACTED] (Cash withdrawals 10/17 through 12/30/17)". (Exhibit A, pp. 24-26.)

3. On September 21, 2018, the Department issued a Benefit Notice advising the Petitioner that the Department found that a Divestment had occurred and that the Department had imposed a divestment penalty. The Department imposed a Divestment penalty period beginning November 1, 2018, through April 3, 2019. (Exhibit A, pp. 80-82.)
4. Attached to the September 21, 2018, Benefit Notice was a letter explaining the reasons for the Department's determination that a divestment had occurred as follows:
 1. The Department did not accept Petitioner's AHR's appraisal of the Petitioner's homestead as \$ [REDACTED] because she is not an impartial third party. Therefore, the Department must consider the 2017 SEV X 2 as the fair market value of the house: \$ [REDACTED] divestment amount.
 2. The amount written off for the land contract from the home sale was not valid because there was no signed land contract. Policy requires a signed contract for that to be considered. \$ [REDACTED] divestment.
 3. Petitioner's AHR determined that the home was appraised at \$ [REDACTED] she subtracted \$ [REDACTED] the remaining amount for the sale would be \$ [REDACTED] but she accepted \$ [REDACTED] and didn't have receipts or proof of why the amount satisfied the sale, the difference between \$ [REDACTED] - \$ [REDACTED] divestment.
 4. The total amount of \$ [REDACTED] was cash withdrawn from the [REDACTED] account from October 2017 through December 2017 when the money was depleted. Petitioner's AHR presented receipts for some of the cash expenses; we could only use those that were from October through December 2017 timeframe. The valid, usable receipts totaled \$ [REDACTED] (\$ [REDACTED]). In addition to these, we added a Best Buy receipt presented that purchased a PlayStation game console and controllers in the amount of \$ [REDACTED] and an unknown GameStop purchase made in November for \$ [REDACTED] with those tallied, that brought cash divestment to \$ [REDACTED]. The terms of the Special Needs Trust are very strict; the funds must be used for [REDACTED] benefit; so, if we can't prove that they were, we must treat them as divestment.

The final total divestment amount was \$ [REDACTED] and the divestment period is 5 months and 3 days. Divestment begins November 1, 2018, and will go through April 3, 2019.

5. The Petitioner had a Special Needs Trust dated August 30, 2017, which was an irrevocable discretionary trust for the benefit of Petitioner. The Trustee was [REDACTED], Petitioner's son. (Exhibit A, pp. 1-9.)
6. The Department's Office of Legal Services reviewed the trust document on September 14, 2017, and determined that it was a valid Special Needs Trust and as such, the trust was not to be counted as an asset. (Exhibit A, pp. 10-12.)
7. On August 30, 2017, the Petitioner executed a Quit Claim Deed to [REDACTED], Trustee of the Special Needs Trust (Trust), the property commonly known as [REDACTED], placing the real property in the trust.
8. On October 13, 2017, the Trustee of the Petitioner's Special Need Trust signed a Warranty Deed for the sale of property conveying the property at [REDACTED], to the purchaser, [REDACTED], for \$ [REDACTED] (Exhibit A, pp. 15-16.)
9. The Petitioner's AHR requested a timely hearing on October 11, 2018, protesting the Department's divestment determination and 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.

In this case, the matters for review concern the Department's divestment determination arising from the sale of a home belonging to Petitioner and deeded by her to her Special Needs Trust, and the divestment of certain unverified cash expenditures by Petitioner's trustee of the proceeds from the sale of the home made from the Petitioner's Special Needs Trust bank account. During the 2018 Redetermination for ongoing medical

assistance, the Department discovered during its review that a home belonging to Petitioner had been sold. The property in question was given to the Petitioner by her father; she did not live in the home. The Petitioner is disabled and receives in-home care based upon her Medicaid Eligibility. After the establishment of a Special Needs Trust dated August 30, 2017, the Petitioner executed a deed to the home conveying it to the trustee of the Special Needs Trust, making the home part of the trust. Thereafter, the Trustee sold the home to the purchaser, [REDACTED] who was living in the home, conveying the property to [REDACTED] by warranty deed executed on or about October 16, 2017. (Exhibit A, pp. 15-16.) The warranty deed listed the purchase price consideration as \$ [REDACTED]

A divestment is defined by Department policy as:

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 (see RESOURCE DEFINED below and in glossary) by a client or his spouse that are all of the following:

- Is within a specified time; see LOOK-BACK PERIOD in this item.
- Is a transfer for LESS THAN FAIR MARKET VALUE; see definition in glossary.
- Is not listed below under TRANSFERS THAT ARE NOT DIVESTMENT

During the penalty period, Medical Assistance will not pay for Home and Community Based Services. Resource means all the client's assets and income. It includes all assets and all income even countable and/or excluded assets the individual or spouse receive. It also includes all assets and income that the individual (or spouse) were entitled to but did not receive because of action by one of the following:

The client or spouse

- A person (including a court or administrative body) with legal authority to act in place of or on behalf of the client or the client's spouse.
- Any person (including a court or administrative body) acting at the direction or upon the request of the client or his/her spouse.

Transferring a resource means giving up all or partial ownership in (or rights to) a resource.

Not all transfers are divestment. Examples of transfers include:

- Selling an asset for fair market value (not divestment).
- Giving an asset away (divestment).
- Refusing an inheritance (divestment).
- Payments from a **MEDICAID TRUST** that are not to, or for the benefit of, the person or his spouse; see BEM 401 (divestment).
- Putting assets or income in a trust; see BEM 401.
- Giving up the right to receive income such as having pension payments made to someone else (divestment).
- Giving away a lump sum or accumulated benefit (divestment).
- Buying an annuity that is not actuarially sound (divestment).
- Giving away a vehicle (divestment).
- Putting assets or income into a Limited Liability Company (LLC). BEM 405, p. 2.

Transfers by anyone acting in place of, on behalf of, at the request of, or at the direction of the client or client's spouse.

In this case, the Trustee of the Petitioner's Special Needs Trust was acting on behalf of the trust and was the person selling the home and who made the subsequent cash transactions from the trust bank account.

A divestment determination is **not** required unless, sometime during the month being tested the client was in a penalty situation. Because the Petitioner was approved for MIChoice waiver, she was in a penalty. See BEM 405, p. 6.

Sale of Home by Special Needs Trust - Divestment

In this case, the Department determined that a divestment occurred because it found the sale of home, [REDACTED], by the Petitioner's trust was sold for less than fair market value.

Department policy defines less than fair market value:

Less than fair market value means the compensation received in return for a resource was worth less than the fair market value of the resource. That is, the amount received for the resource was less than what would have been received if the resource was offered in the open market and in an *arm's length transaction* (see glossary). BEM 405, p. 6.

The Glossary defines fair market value as

The amount of money the owner would receive in the local area for his asset (or his interest in an asset) if the asset (or his interest in the asset) was sold on short notice, possibly without the opportunity to realize the full potential of the investment. That is, what the owner would receive and a buyer be willing to pay on the open market and in an arm length transaction. See definition in this glossary. (July 2018), p. 27.

The Glossary further defines arms-length transaction as:

A transaction between two parties who are not related and who are presumed to have roughly equal bargaining power. It consists of all the following three elements:

- It is voluntary.
- Each party is acting in their own self-interest.
- It is on an open market.

By definition, a transaction between two relatives is not an arm length transaction. Glossary (July 2018) p. 6

When a transfer occurs, the Department must verify the following to document the divestment:

Date of Transfer.

Fair market value or cash value.

Uncompensated value. BEM 405, p. 17.

The Petitioner's AHR testified that the sale price of the home was \$ [REDACTED] and that the individual living in the home, the purchaser, was credited for the maintenance cost associated with his caring for and maintaining the home. The sale price determination was presumably made by Petitioner's AHR based upon 2015 comparable sales of similar homes. The home was not listed for sale on the open market by a real estate agency. The home was sold to the buyer who had occupied the home since 2015. The buyer received a credit of \$ [REDACTED] for maintenance of the home during his occupancy. The maintenance costs credited to the buyer were to compensate him for maintenance and upkeep of the property. There was no written contract covering the home maintenance agreement between the parties, made by the Petitioner, or by the Special Needs Trust by the Trustee and the Purchaser of the home, [REDACTED].

Petitioner's AHR testified that the maintenance cost credit of \$ [REDACTED] was determined based on an estimated cost of \$ [REDACTED] a month and covered a 30-month period. This contract was referred to by the Department as a "land contract"; however, it was not a land contract but a maintenance credit to the purchaser applied to the sale price.

The Department determined that the sale of the home was a divestment for several reasons, including, the home was sold for less than fair market value. The Department rejected the valuation by the Petitioner's AHR who is a real estate agent due to her not being an impartial party as she is the Petitioner's mother. In addition, although not stated by the Department, the valuation provided by Petitioner's AHR to support the sale price of the property was the value of the property in 2015 (two years before the home was sold) which is not the best available pricing information. The home in question was sold/conveyed in October 2017; thus, the value of the home should have

been based upon sales of comparable properties at the time of the sale in October 2017. The Department did not accept the valuation of the property by Petitioner's AHR. The actual warranty deed also listed the property sale price as \$ [REDACTED]

To verify real property value, the following may be used:

- Deed, mortgage, purchase agreement or contract
- State Equalized Value (SEV) on current property tax records multiplied by two.
- Attorney or court records.
- County records.
- Statement of real estate agent or financial institution.

BEM 400, p.62

For medical assistance the value of real property is the equity value, which is the fair market value minus the amount legally owed in a written lien provision. Liens must be filed with the Registrar of Deeds or other appropriate agency. Deeds are considered legal if they are signed and notarized. It does not have to be registered with the Registrar of Deeds to be a legal document. BEM 400, p. 32.

The Department presented evidence it used to determine fair market value of the home. The Department used the 2017 tax records for the home to establish the State Equalized Value (SEV) of the property which was \$ [REDACTED] for tax year 2017, the year the property was sold. The Department in accordance with Department policy used two times SEV and determined the fair market value to be \$ [REDACTED]. Based upon the \$ [REDACTED] purchase price and the Department's determination of fair market value, the Department determined that a divestment occurred because the home was sold for less than fair market value. The Department found a divestment amount based upon its evaluation of fair market value of \$ [REDACTED] less the \$ [REDACTED] valuation given by Petitioner's AHR. The divestment was determined to be \$ [REDACTED] the difference between the two valuation amounts (\$ [REDACTED]). (Exhibit A, pp. 82.) The divestment determination is supported by Department policy in BEM 400 as using two times SEV is an allowable method to determine fair market value and was the best available information as the Petitioner's AHR comparable home sales valuation was for the wrong time period.

In addition, the sale of the house by the Trust was not an arm-length transaction because it was not a sale on an open market. The purchaser and the seller were the only individuals involved in the sale nor was there evidence any other party was offered the property. It is also not considered a sale on the open market because it was not listed for sale; no realtor was involved in the sale. The facts in evidence establish that

the sale of the home was a private sale to one interested buyer. No other person was offered the home at the \$[REDACTED] sale price. Therefore, it is concluded that there has been a divestment as the property was sold for less than fair market value as the transaction was not an arm-length transaction for the reasons stated above as well.

Based upon what information was available to the Department at the time of its determination, the Department's determination of the fair market value was in conformance with Department policy and was a reliable and accurate valuation at the property.

The Department further considered whether the \$[REDACTED] credit to the purchaser of the home for 30 months of maintenance services beginning in 2015 when he occupied the home, was also a basis for a divestment. The agreement for the home maintenance services was not in writing, and no written proof to substantiate the basis for the \$[REDACTED] credit was offered. The Petitioner's AHR testified that it covered home maintenance, which included lawn cutting, snow shoveling, keeping the house occupied as it was in a bad area of town, and the purchaser lived in the home and kept the home operating. The Petitioner's AHR also testified that the purchaser did not pay rent. No maintenance receipts or other documentation of cost of repairs were presented. The Department deemed the entire \$[REDACTED] to be a divestment. The "land contract" was in reality a verbal home maintenance agreement with the purchaser of the home from the time he occupied the home and was not in writing. The Department did not accept the arrangement for home maintenance as it was not in writing. Based upon its review, the Department found a Divestment for \$[REDACTED] because the \$[REDACTED] credit for work performed was not substantiated and was not in writing.

Department policy requires that Home Care Contracts which pay for expenses such as home care repairs, property maintenance, property taxes and homeowner's insurance, heat and utilities for the homestead or other real property of the clients be considered for divestment. BEM 405 (July 2017), p. 8.

Personal Care and Home Care contracts/agreements shall be considered a transfer for less than fair market value unless the agreement meets **all** of the following:

- The services must be performed after a written legal contract/agreement has been executed between the client and the provider. The contract/agreement must be dated and the signatures must be notarized. The services are not paid for until the services have been provided (there can be no prospective payment for future expenses or services); and

At the time the services are received, the client cannot be residing in a nursing facility, adult foster care home (licensed or unlicensed), institution for mental diseases, inpatient hospital, intermediate care facility for individuals with intellectual disabilities or be eligible for home and community-based waiver, home health or home help; and

- At the time services are received, the services must have been recommended in writing and signed by the client's physician as necessary to prevent the transfer of the client to a residential care or nursing facility. Such services cannot include provision of companionship; and
- The contract/agreement must be signed by the client or legally authorized representative, such as an agent under a power of attorney, guardian, or conservator. If the agreement is signed by a representative, that representative cannot be the provider or beneficiary of the contract/agreement.
- MDHHS will verify the contract/agreement by reviewing the written instrument between the client and the provider which must show the type, frequency and duration of such services being provided to the client and the amount of consideration (money or property) being received by the provider, or in accordance with a service plan approved by MDHHS.

Assets transferred in exchange for a contract/agreement for personal services/assistance or expenses of real property/homestead provided by another person after the date of application are considered available and countable assets. BEM 405, pp. 8.

Based upon the facts and evidence presented and BEM 405 requirements above, the Department correctly determined the \$ [REDACTED] credit for home care services a divestment.

Finally, the Department also found a divestment \$ [REDACTED] resulting from the sale of the home based upon the cash proceeds received. The Department determined that the gross proceeds from the sale should have been \$ [REDACTED] based upon the \$ [REDACTED] purchase price minus the \$ [REDACTED] maintenance credit. (\$ [REDACTED] \$ [REDACTED])

The Department used the net proceed amount reported in the Payoff document provided by the Petitioner of \$ [REDACTED] as the sales proceeds received by the trust. The Department did not include the expenses paid by the trust from the gross proceeds to complete the sale, which were obligations of the trust as the seller, and which were required to be paid as expenses attributable to the sale. The expenses not included as part of the proceeds included \$ [REDACTED] revenue stamps; Recording deed, \$ [REDACTED] recording certificate of trust, \$ [REDACTED]. The expenses total \$ [REDACTED]. Another listed expense was for the payment for 2015 taxes in the amount of \$ [REDACTED]. This amount cannot be included as it cannot be determined as an appropriate expense as there is no explanation as to why the credit was paid. (Exhibit A, p. 92.)

As noted in the Payoff document provided to the Department, the gross proceeds were \$ [REDACTED] prior to the closing expense deductions. These expenses, except for the tax credit for 2015 for \$ [REDACTED] which is not explained, should have been included as monies received from the sale as proceeds. The total of the expenses to close the sale

in the amount of \$ [REDACTED] should have been added to the proceeds when determining the divestment amount. When the \$ [REDACTED] net proceeds include the expense of the sale by the seller, the net proceed amount is \$ [REDACTED] (\$ [REDACTED]). When the new net proceed amount is deducted from \$12,000.00, the new divestment amount is \$ [REDACTED] ([REDACTED]). Looking at it another way, the same expenses would have been deducted from the \$ [REDACTED] proceeds determined by the Department as well, thus, comparing apples to apples.

Thus, it is concluded the divestment amount for the difference in proceeds should be changed to \$ [REDACTED] as calculated above, and the divestment amount recalculated.

Cash Expenditures for Special Needs Trust Divestment

After the sale of the home, Petitioner's Special Needs Trust received proceeds from the sale. The proceeds were deposited into a [REDACTED] account associated with the Petitioner's Special Needs Trust. From the sale proceeds, \$ [REDACTED] in cash was withdrawn from the [REDACTED] account associated with the Trust from October 2017 through December 2017. (Exhibit A, pp. 40-55.)

The Department reviewed the bank records provided with the verification request and determined the following cash withdrawals were not accounted for and sought an explanation regarding these withdrawals. The Department testified that it requested in the VCL verification of all cash withdrawals from the Special Needs Trust and requested these proofs several times. The Department identified the following cash withdrawals which were of concern by highlighting them on the bank statement for the [REDACTED] Account which was opened September 15, 2017:

- \$ [REDACTED] on October 18, 2017;
- \$300.00 on October 20, 2017;
- \$100.00 on October 20, 2017
- \$440.00 on October 23, 2017
- \$300.00 on October 25, 2017
- \$200.00 on October 31, 2017
- \$300.00 on November 13, 2017
- \$100.00 on November 14, 2017
- \$ [REDACTED] on November 24, 2017 (GameStop);
- \$200.00 on November 27, 2017
- \$100.00 on December 1, 2017
- \$250.00 on December 12, 2017
- \$200.00 on December 13, 2017
- \$100.00 on December 13, 2017
- \$200.00 on December 22, 2017. (Exhibit A, pp. 40- 55.)

The Department determined a divestment because although not stated as such, the cash expenditures may have been given away because the department could not

determine what the cash was used for and whether the cash withdrawn was used for Petitioner and met the requirement of the Special Needs Trust as being for the Petitioner's care. Department policy states that in order to be considered a Special Needs Trust, the trust must ensure that none of the principal or income can be used for someone else during the person's lifetime, except for Trustee Fees per BEM 405. BEM 401, (April 2017), p. 8.

The Trust in question was an Exception A Special Needs Trust. BEM 401, (May 2018), pp.7-8, sets forth the criteria for a Special Needs Trust and provides that the trust must ensure that none of the principal or income can be used for someone else during the person's lifetime, except for Trustee Fees. Assets and income transferred to a Special Needs Trust are part of the trust for the entire month of transfer. Department policy requires that it is to count as a person's unearned income any payment received from the Trust. BEM 401, p. 9.

The Department properly requested verification of the cash expenditures for higher dollar amounts because it could not determine what the funds were spent on. The review was to determine if the funds were used for Petitioner as required by the trust and Department policy and to determine if any of the cash expenditure (withdrawals) from the account resulted in a divestment.

After reviewing receipts provided by Petitioner's AHR, the Department credited \$ [REDACTED] as valid expenses for the benefit of Petitioner. (Exhibit A, pp. 56-78.) The Department only reviewed expenses/cash withdrawals from October 2017 through December 2017. Any items purchased by a debit card were determined approved as there were receipts. It was the Department's determination that \$ [REDACTED] of the cash expenditures it reviewed were not accounted for as being used for the Petitioner because no receipts associated with the cash withdrawals were provided. The Department testified that it could not be determined where or what the money was spent on. The bank record expenditures that were not cash withdrawals and identified where the funds were spent were determined to not be divestments. In addition, the largest withdrawal for \$ [REDACTED] made on October 18, 2017, although not discussed at the hearing, because of the large-dollar amount should have been able to be associated with an expenditure for something concrete. The cash was withdrawn two days after the property was sold.

Given the fact that there was no documentation for the cash expenditures documenting that they were for the Petitioner's personal needs and care, the Department's determination that the withdrawals in the amount of \$ [REDACTED] were a divestment is correct. (Exhibit A, pp. 42,45,47,51 and 52.)

The Department also excluded a Best Buy receipt for \$ [REDACTED] for the purchase of PlayStation games and controllers, (Exhibit A, p. 72), and a GameStop purchase in November 2017 for \$ [REDACTED] (Exhibit A, p. 49.) The Department disallowed these expenses based upon the "strict terms" of the Special Needs Trust. The total cash

divestment amount was \$ [REDACTED] (cash purchases without receipts), and the disallowed expenditures from PlayStation and GameStop purchases totaled \$ [REDACTED] resulting in a total divestment of \$ [REDACTED] (Exhibit A, p. 72.)

The Department disallowed the Best Buy and GameStop purchases because they felt the Petitioner's son, who was the Trustee of the trust, bought the games for his own use. The Petitioner's AHR denied that the games were for Trustee and testified that they were bought for Petitioner use. The Department testified that the funds from the trust must be used for Petitioner's needs. Department policy requires that a Special Needs Trust must not be used for someone else. BEM 401, p. 8. The Petitioner's AHR testified that the game system and games were necessary for Petitioner's mental care because they give her something to do given her disabilities and to keep her mind off her disabling illness. In addition, the Department offered an opinion that if she paid for these purchases out her own funds, they would not be a divestment. The Petitioner's AHR testified that the funds came out of the trust account and were paid by debit card which was correct. (Exhibit A, pp. 72 and 46.)

Based upon the evidence presented, it is determined that the Department did not meet its burden of proof to support its determination that the game system purchase and games were not for the benefit of Petitioner and as such were a divestment. Based upon the evidence, it was not established by the Department that the Trustee bought them for his own use out of the trust funds or that the Petitioner bought the game system and games for him. Therefore, the sum of the two debit card purchases for the game system and games (PlayStation and GameStop purchases) (\$ [REDACTED]) must be removed from the total divestment amount, and the divestment penalty must be recalculated.

After the Petitioner's AHR submitted the hearing request, she provided the Department a further submission of receipts identified as Exhibit A, pp. 115 through 187, which were presented at the prehearing conference. This submittal was not considered by the Department when it made its divestment decision with respect to cash expenditures as it was not available to them at that time. The Petitioner's AHR could not identify which receipts in her packet were not included by the Department in its calculation of cash transactions with receipts. (Exhibit A, pp. 40-55.) Many of these receipts provided at the prehearing conference included items purchased in January, February and March of 2018, which the Department testified it would not have considered because the balance in the bank account associated with the Special Needs Trust had only \$ [REDACTED] left in the account in January 2018 and also because the amount remaining in the account was under the medical assistance asset limit of \$2,000.00. A cursory review of the packet after the hearing lists receipts for cash purchases of \$ [REDACTED] for October through December 2017; however, any "new" receipts were not specifically identified. The Department correctly determined that it was not required to review the receipts submitted at the prehearing as they were provided after the VCL due date of September 10, 2018, and after the Divestment penalty was already determined. As such, the Department is not required to review these additional receipts for the reason

Department policy does not require the Department to review further information submitted after the VCL due date. BAM 130 (April 2017), pp. 8-9.

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 the sale of the trust property in question was not sold for fair market value, the \$ [REDACTED] divestment amount is correct; determined the correct divestment amount of \$ [REDACTED] as the home maintenance credit was a divestment as it did not comply with BEM 405 and was not in writing and also properly determined the divestment due to lack of substantiation of the cash withdrawals in the amount of \$ [REDACTED]

The Department improperly calculated the divestment amount regarding the discrepancy in the sale proceeds (sale proceeds shortfall) received from the sale of the home when it failed to include \$ [REDACTED] in closing costs in the net proceeds. The divestment total of \$ [REDACTED] determined by the Department must be reduced to \$ [REDACTED] and the divestment amount and penalty must be recalculated.

The Department did not meet its burden of proof that it acted in accordance with Department policy with respect to its disallowance of expenditures for purchases of video game equipment and games finding the purchase was not for Petitioner and her needs in the total amount of \$ [REDACTED] was a divestment. As such, the divestment amount and penalty must be recalculated.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the Divestment determinations with respect to the home sale regarding fair market value and denial of the home maintenance credit and divestment of \$ [REDACTED] due to failure to provide receipts regarding cash transactions; and,

REVERSED IN PART with respect to the divestment amount regarding the discrepancy in sale proceeds from the sale of the home due to not including the expenses for the sale closing and disallowance of the costs of purchase for video game equipment and video games.

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. The Department shall recalculate the divestment amount and the divestment penalty in accordance with the findings and conclusion consistent with this Hearing Decision.

2. The Department shall issue a new Benefit Notice setting for the new divestment period as calculated pursuant to paragraph 1 and provide a copy to the Petitioner and Petitioner's AHR.

LMF/jaf



Lynn M. Ferris

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 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) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

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

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Carisa Drake
MDHHS-Calhoun-Hearings

Authorized Hearing Rep.

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

Petitioner

[REDACTED]
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