



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: December 19, 2018
MAHS Docket No.: 18-010907
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 December 6, 2018, from Detroit, Michigan. The Petitioner was not present but was represented by [REDACTED] Authorized Hearing Representative. [REDACTED] and [REDACTED] from the Long Term Care (LTC) facility also appeared on behalf of Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Family Independence Manager.

ISSUE

Did the Department properly assess a divestment penalty against Petitioner from August 1, 2018 through October 28, 2018?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner is an ongoing recipient of MA benefits.
2. Petitioner and her husband are currently residing in a LTC facility.
3. While in the facility, Petitioner and her husband's home was sold for \$ [REDACTED]
4. On July 19, 2018, the Department sent Petitioner's husband a Benefits Notice which notified him that a divestment penalty had been imposed from August 1, 2018 through October 27, 2018.

5. At the time of the July 19, 2018 Benefit Notice, the Department only assessed the divestment penalty to Petitioner's husband.
6. The Department later determined that the divestment penalty applied to both Petitioner and her husband.
7. The Department applied the full divestment penalty to both Petitioner and her husband.
8. It is unclear whether the Department sent Petitioner written notice to advise that she had been assessed the same divestment penalty as her husband.
9. On or about September 25, 2018, the Department advised the LTC facility in which Petitioner is residing that she was subject to a divestment penalty from August 1, 2018 through October 27, 2018.
10. On October 31, 2018, Petitioner's AHR filed a Request for Hearing disputing the Department's actions.

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.

Additionally, divestment is a type of transfer of a resource and not an amount of resources transferred. BEM 405 (April 2018), p. 1. Further, during the penalty period, MA will **not** pay the client's cost for:

1. Long Term Care (LTC) services.
2. Home and community-based services.
3. Home help.
4. Home health. *Id.*

In this case, Petitioner and her husband are currently residing in a LTC facility. While in the LTC facility, Petitioner and her husband's home was sold for \$[REDACTED]. The Department initially determined that a divestment penalty applied only to Petitioner's

husband and thus, assessed him a divestment penalty from August 1, 2018 through October 27, 2018, which represented the entire divestment penalty. In a review of the case, the Department later determined that the divestment penalty should have been applied to both Petitioner and her husband. On September 25, 2018, the Department notified Petitioner that she was also subject to a divestment penalty from August 1, 2018 through October 27, 2018. This caused each spouse to be subject to the full divestment penalty.

The parties do not dispute that a divestment occurred. As such, an analysis of the computation of the applicable penalty period follows. The Department determined that Petitioner was eligible for MA, but subject to a divestment penalty for the period between August 1, 2018 through October 27, 2018. Department policy provides that the penalty period is computed based on the total uncompensated value of all resources divested, which in this case is the cash value. Once the total uncompensated value is determined, the Department is to divide that amount by the average monthly private LTC cost in Michigan, which is based on the client's baseline date. This gives the number of full months for the penalty period. The fraction remaining is multiplied by 30 to determine the number of days for the penalty period in the remaining partial month. BEM 405, pp.12-15. Applying Department policy to Petitioner's case, based on a \$[REDACTED] total uncompensated value of the divested resources and an \$8,261.00 average monthly private LTC cost in Michigan applicable to Petitioner's 2018 baseline date, the divestment penalty is 89.7 days.

However, because Petitioner and her spouse were both residing in a LTC at the time the divestment occurred, the divestment penalty period must be divided between them. BEM 405, p. 15. When the total divestment days of 89.7 is divided by two, it computes to an individual divestment penalty of 44.85 days. Therefore, it is found that the Department improperly assessed the 89.7-day divestment penalty on each spouse.

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 assessed Petitioner with a divestment penalty from August 1, 2018 through October 27, 2018.


DECISION AND ORDER

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

1. Recalculate the divestment penalty of Petitioner in accordance with this Decision;
2. If Petitioner is eligible for supplements, issue MA supplements that Petitioner was eligible for but did not receive; and

3. Notify Petitioner's AHR in writing of its decision.

JAM/tlf



Jacquelyn A. McClinton
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) 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

MDHHS-Hillsdale-Hearings
BSC4 Hearing Decisions
EQAD
[REDACTED]
MAHS

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]