



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: April 12, 2019  
MAHS Docket No.: 19-001072  
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 March 19, 2019, from Lansing, Michigan. The Petitioner was represented by her Attorney Todd Balkema, P#64038 and [REDACTED], Petitioner's son and Power of Attorney. The Department of Health and Human Services (Department) was represented by Angela Calogerakis, Long Term Care Specialist.

**ISSUE**

Did the Department properly determine Petitioner's eligibility for Medical 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. Petitioner applied for MA benefits for long term care.
2. On December 13, 2018, the Department Caseworker sent Petitioner a Health Care Coverage Determination Notice, DHS-1606, that Petitioner was eligible for MA with a \$265 patient pay for September 2018, \$6,590 for October 2018, through December 2018, and \$6,607 from January 2019, ongoing. Department Exhibit 1, pgs. 17-19.
3. On February 7, 2019, 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, the Long-Term Specialist (LTS) stated that in error she approved the case with a divestment that Petitioner was active for MA for September. The divestment should have started in the month MA was approved. However, Petitioner had an increase change in income in the month of October, which resulted in a change in the type of MA received by Petitioner. The divestment follows the type of MA ongoing.

Once Petitioner was approved for MA, the correspondence goes out that night. The LTS cannot make a change and take away MA benefits already approved per federal guidelines. BEM 400. The parties agree that the divestment penalty should have started in September 2018 and the Administrative Law Judge would make that order accordingly.

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 failed to have the divestment penalty start in September 2018 through April 3, 2019.

### **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. Initiate a redetermination of Petitioner's eligibility for MA with a divestment penalty to start in September 2018 through April 3, 2019.

2. Based on policy, the Department should provide Petitioner with written notification of the Department's revised eligibility determination.
3. Issue Petitioner any retroactive benefits she may be eligible to receive, if any.

CF/hb



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**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 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**

Kimberly Kilmer  
800 Watertower  
Big Rapids, MI 49307

**DHHS**

SSPC  
235 S Grand Ave Ste 1207  
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**Petitioner**

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