



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: April 3, 2019
MAHS Docket No.: 19-001367
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, an in-person hearing was held on March 14, 2019, from Detroit, Michigan. The Petitioner was not present but was represented by Kendra Rozboril. The Department of Health and Human Services (Department) was represented by Chantel Fennessey, Assistant Attorney General. Tara-Kai Escoe, Eligibility Specialist appeared on behalf of the Department.

ISSUE

Did the Department properly correct an error and adjust the divestment penalty to begin October 1, 2018 through January 2, 2019?

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], 2018, Petitioner applied for Medical Assistance (MA) benefits.
2. On May 17, 2018, the Department sent Petitioner a Verification Checklist (VCL) requesting information regarding assets which was due to be returned on May 17, 2018.
3. On May 28, 2018, proofs were received showing a promissory note for \$28,046.00 and money gifted by Petitioner in the amount of \$25,404.17.

4. On June 11, 2018, the case was certified without adding the divestment and a notice was sent to Petitioner which notified her that she had been approved for full MA benefits with no patient pay amount.
5. On June 20, 2018, Petitioner's assigned worker certified her case and added the divestment penalty into the Department's computer system.
6. The Department determined the divestment penalty period to begin on August 1, 2018 and end on November 21, 2018.
7. Petitioner's assigned case worker failed to send correspondence notifying Petitioner that the divestment penalty would begin on August 1, 2018.
8. Petitioner's case was reassigned to a new worker.
9. Petitioner's new case worker reviewed the file and confirmed that notice had not been sent to Petitioner regarding the application of the divestment penalty as required by Department policy.
10. Petitioner's new case worker contacted the appropriate Department unit and requested reinstatement of Petitioner's MA benefits.
11. On August 17, 2018, Petitioner's MA benefits were reinstated.
12. On August 21, 2018, the Department sent Petitioner a Benefit Notice which notified Petitioner that the divestment penalty period would begin effective October 1, 2018 and would continue until January 2, 2019.
13. On November 14, 2018, the Department sent Petitioner a Health Care Coverage Determination Notice which notified Petitioner that she was required to pay a month patient pay amount in the amount of \$453.00 and further stated that she was subject to a divestment penalty period from October 1, 2018 through January 2, 2019.
14. On February 8, 2019, Petitioner's counsel 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.

There is no dispute that the promissory note was received by the Department on May 28, 2018. Petitioner argues that the Department became aware of the promissory note on April 24, 2018. However, at that time, the Department was made aware that a gift and promissory note would be completed. There was not a date certain provided as to when the gift and promissory note would be completed. As such, it is found that the Department did not become aware of the promissory note until it received the proofs on May 28, 2018.

The Department is required to act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change. BAM 220 (January 2018), p. 7. Further, if the reported change will decrease the benefits or make the household ineligible, action must be taken and a notice issued to the client within 10 days of the reported change. BAM 220, p. 8. As such, June 19, 2018, would have been approximately 15 working days after the Department was notified of the change.

When it is discovered that eligibility was determined incorrectly (regardless of client or agency error), the Department is required to correct the applicable determination, even if it results in a negative action (including closure). BAM 220 (January 2018), p. 2. In this case, Petitioner's assigned worker realized that he had improperly certified the case without adding the divestment/gifted money which resulted in a Notice of Case Action being generated on June 5, 2018, indicating that Petitioner was eligible for full MA with no patient pay amount. Once the case was certified on June 5, 2018, Petitioner became an ongoing recipient of MA benefits. Realizing the error, in accordance with policy, Petitioner's assigned worker corrected the error and certified the case on June 20, 2018 and added the divestment penalty. Once the 11 days to send notice is added to the certification date, the time to provide Petitioner with notice would have fallen sometime in July which would have caused the effective date of the divestment penalty to begin on August 1, 2018. The divestment penalty was recorded in the Department's computer system. Unfortunately, the initial error was confounded when the assigned case worker failed to send notice.

Under Department policy, timely notice must be given to LTC recipients and (BEM 106) waiver recipients before actually applying the penalty. BEM 405 (April 2018), p. 15. There is no dispute that Petitioner was a resident in an LTC at the time of application. Ms. Escoe testified that once she became the assigned worker and reviewed the case, she discovered that although the divestment penalty had been added in the Department's computer system, notice had not been sent to the client. As such, because Petitioner was a resident in an LTC, notice was required to be sent prior to the application of the divestment penalty.

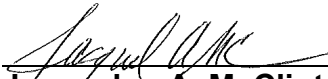
Once Ms. Escoe discovered the error, she was required under policy to correct the error. Ms. Escoe testified that contacted the appropriate office within the Department to have the divestment penalty lifted as it was improperly applied. On August 17, 2018, the divestment penalty was lifted. On August 21, 2018, the Department sent Petitioner a Benefit Notice which notified Petitioner that the divestment penalty would begin on October 1, 2018 and continue until January 2, 2019. Adding 11 days to the notice date of August 21, 2018 would have cause the date effective date to fall sometime in September. Benefits changes take effect the first day of the next month after eligibility has been established. As such, the Department correctly determined that the divestment penalty should begin on October 1, 2018.

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 corrected an error and applied the divestment penalty from October 1, 2018 through January 2, 2019.

DECISION AND ORDER

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

JAM/tlf



Jacquelyn A. McClinton
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

Via Email:

AG-HEFS-MAHS – Fennessey
MDHHS-Macomb-12-Hearings
EQAD
D. Smith
MAHS

Petitioner – Via USPS:



Counsel for Petitioner – Via USPS:

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