



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR

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

Date Mailed: August 1, 2019  
MOAHR Docket No.: 19-005087  
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, an in-person hearing was held on July 2, 2019, from St. Johns, Michigan. Petitioner was represented by Attorney Susan Chalgian, P# 79950 and Attorney David L. Shaltz, P#29330. The Department of Health and Human Services (Department) was represented by Assistant Attorney General H. David Beaton, Jr. P#43336, Ann Snider, Assistant Payment Worker, and Lisa Williams, Long Term Care (LTC) Worker.

### **ISSUE**

Did the Department properly determined that a divestment had occurred requiring a divestment penalty in order to be eligible for Medical Assistance (MA) LTC?

### **FINDINGS OF FACT**

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

1. The original property deed listed Petitioner and her son as joint tenants with full rights of survivorship on October 21, 1993. Petitioner's Exhibit 1.
2. On [REDACTED], 2019, Petitioner applied for MA LTC along with a new warranty deed showing that she sold the contested property to her son for \$1,000 with a check dated December 28, 2018, a letter from said son writing that he refuses to sell his interest in the contested property notarized on April 18, 2019, and two letters dated November 20, 2018, and November 12, 2018, from two area realtors

saying that the contested property would be very difficult to sell and had \$0 market value because of the joint interest. Department Exhibit 1, pgs. 4-13.

3. On April 16, 2019, the Department Caseworker sent the Petitioner a Health Care Coverage Determination Notice, DHS-1606, that due to a divestment penalty that MA will not pay LTC from January 1, 2019, through April 19, 2019, because the Petitioner transferred assets for less than their fair market value but that she is eligible with a \$1,650 monthly patient pay from January 1, 2019, ongoing. Department Exhibit 1, pgs. 15-18.
4. On April 25, 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 Petitioner applied for MA LTC on [REDACTED], 2019, along with a new warranty deed showing that she sold the contested property to her son for \$1,000 with a check dated December 28, 2018, a letter from said son writing that he refuses to sell his interest in the contested property notarized on April 18, 2019, and two letters dated November 20, 2018, and November 12, 2018, from two area realtors saying that the contested property would be very difficult to sell and had \$0 market value because of the joint interest. Department Exhibit 1, pgs. 4-13. On April 16, 2019, the Department Caseworker sent the Petitioner a Health Care Coverage Determination Notice, DHS-1606, that due to a divestment penalty that MA will not pay LTC from January 1, 2019, through April 19, 2019, because Petitioner transferred assets for less than their fair market value but that she is eligible with a \$1,650 monthly patient pay from January 1, 2019, ongoing. Department Exhibit 1, pgs. 15-18. On April 25, 2019, the Department received a hearing request from Petitioner, contesting the Department's negative action. BEM 400 and 405.

During the hearing, the Department contends that the property was jointly with rights of survivorship held with Petitioner and her son with a net worth based on State Equalized Value (SEV) of \$63,800 using the 2018 SEV of \$31,900 times 2. The contested

property is unimproved property of land only with no structures. Petitioner's home is exempt. On December 28, 2018, Petitioner's son bought out her half interest for \$1,000.

When Petitioner applied for MA LTC on [REDACTED], 2019, she no longer owned the property, but had sold it to her son for \$1,000 on December 28, 2018. Department Exhibit 1, pgs. 8-10. The look back period for the MA LTC program is five years from the date of application. The contested property was not jointly owned by Petitioner when the application was filed. Department Exhibit 1, pgs. 8-9. As a result, there was a required divestment penalty because Petitioner sold the property for less than its fair market value on December 28, 2018. The divestment penalty was \$30,900 which was \$63,800 divided by 2, which equals \$31,900 minus the \$1,000 received for the sale of the property. The divestment penalty period was January 1, 2019, through April 19, 2019.

The Assistant Attorney General argued that the property was never listed for sale during the contested time period. Whether or not the property could be sold is not the issue because it did sell. Petitioner's son bought her 50% interest in the property for \$1,000, which was less than the fair market value of the property.

Petitioner's Attorney counters that the property had no value before it was sold because it was a joint tenancy. Petitioner's son refused to allow Petitioner to sell the property to any third party. Petitioner had to sell the property to the other joint owner at a price that he was willing to pay. In addition, two real estate brokers in the area stated that the contested property would be difficult to sell. The only person who could buy the property was her son, who held the joint tenancy. No real estate broker would list the property because of the joint tenancy. As a result, the contested property is not a countable asset or an available resource to Petitioner with a countable value of \$0. There was no divestment because Petitioner transferred the property for more than the fair market value of \$0.

BEM 400, pgs. 11-12

**JOINTLY  
OWNED  
ASSETS**

**FIP, RCA, SDA, G2U, G2C, RMA, SSI-Related MA Only,  
CDC and FAP**

**Jointly owned assets** are assets that have more than one owner.

An asset is unavailable if all the following are true, and an owner **cannot** sell or spend his share of an asset:

- Without another owner's consent.
- The other owner is not in the asset group.

- The other owner refuses consent.

Jointly owned real property is only excludable if it creates a hardship for the other owners.

**Note:** For jointly owned real property count the individual's share unless sale of the property would cause undue hardship. Undue hardship for this item is defined as: a co-owner uses the property as his or her principal place of residence **and** they would have to move if the property were sold **and** there is no other readily available housing.

BEM 400, pgs. 32-33

**Real  
Property and  
Mobile  
Home Value**

**FIP, SDA, RCA, SSI-Related MA Only, CDC and FAP**

To determine the fair market value of real property and mobile homes use:

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

This Administrative Law Judge finds that Petitioner owned a contested piece of property of undeveloped land with no structures in joint tenancy with full rights of survivorship with her son with a warranty deed that was executed on October 21, 1993. The property does not meet the undue hardship exemption because there are no buildings on the property and her son does not live on the property so it is a countable asset and has value. The look back period for MA is five years. On December 28, 2018, Petitioner sold the contested property to her son for \$1,000. Once the property was sold during the five-year MA look back period, it becomes a countable asset. The Department correctly determined that a divestment had occurred when Petitioner sold the contested property to her son for \$1,000 resulting in a divestment penalty of \$30,900 with a divestment sanction from January 1, 2019, through April 19, 2019.

**DECISION AND ORDER**

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 a divestment had occurred when Petitioner sold the contested property to her son for \$1,000 resulting in a divestment penalty of \$30,900 with a divestment sanction from January 1, 2019, through April 19, 2019.

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

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 Office of Administrative Hearings and Rules (MOAHR).

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

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

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

**DHHS**

Erin Bancroft  
105 W. Tolles Drive  
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BSC2 via electronic mail

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