



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
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[REDACTED]

Date Mailed: July 11, 2019  
MOAHR Docket No.: 19-005667  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

### **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 July 8, 2019, from Detroit, Michigan. Petitioner was represented by her daughter and Authorized Hearing Representative (AHR), The Department of Health and Human Services (Department) was represented by Mark Logan, Family Independence Manager and Kerri Scott, Assistance Payments Worker.

### **ISSUE**

Did the Department properly determine that Petitioner was subject to a Medical Assistance (MA) divestment penalty period of June 1, 2019 through October 19, 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. Petitioner was an ongoing MA recipient.
2. On September 14, 2018, Petitioner entered a Long Term Care (LTC) facility.
3. On February 27, 2019, Petitioner sold her home to her son.
4. On April 29, 2019, Petitioner's AHR completed a redetermination related to Petitioner's MA benefit case.
5. On May 15, 2019, Petitioner's AHR submitted verification of the sale of Petitioner's home (Exhibit A, pp. 12-13).

6. On May 16, 2019, the Department sent Petitioner's AHR a Health Care Coverage Determination Notice (HCCDN) informing her that she was eligible for MA benefits but was subject to a divestment penalty period of June 1, 2019 through October 19, 2019 (Exhibit A, pp. 18-20).
7. On [REDACTED], 2019, Petitioner's AHR submitted a request a hearing disputing the Department's decision.

### **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, Petitioner sold her home to her son On February 27, 2019. On May 9, 2019, Petitioner's AHR submitted the ALTA statement to verify the sale. The Department discovered that Petitioner had gifted the equity in the home to her son in the amount of \$38,332.57. The Department considered the gift of equity to be a divestment and subject Petitioner to a MA divestment penalty.

Divestment means a transfer of a resource by a client or their spouse that are: (i) within a specified time; (ii) a transfer for less than fair market value; and (iii) is not a transfer that is excluded by policy as a divestment. BEM 405 (January 2019), p. 1. Divestment results in a penalty period in MA, not ineligibility. BEM 405, p. 1. During this penalty period, the Department will not pay for the client's LTC services, home and community-based services, home help or home health. BEM 405, p. 1. 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. BEM 405, p. 6. The Department will review any transfers after or 60 months prior to the client's baseline date. BEM 405, p. 5. A client's baseline date is the first date that the client was eligible for MA and one of the following: (i) in LTC; (ii) approved for the waiver; (iii) eligible for home health services; or (iv) is eligible for home help services. BEM 405, p. 6.

The Department presented tax records for Petitioner's home showing the 2019 State Equalized Value (SEV) of the home was \$76,900. The value of real property is determined by: (i) deed, mortgage, purchase agreement or contract; (ii) State Equalized Value (SEV) on current property tax records multiplied by two; (iii) statement of real

estate agent or financial institution; (iv) attorney or court records; or (v) county records. BEM 400 (April 2019), p. 32. According to the ALTA statement, the purchase price of the home was \$160,000. The Department argued that with the gift of equity, Petitioner transferred the asset for less than fair market value.

Department policy also provides that a transfer does not result in a divestment if the transfer is exclusively for a purpose other than to qualify or remain eligible for MA. BEM 405, p. 11. In making this assessment, the Department assumes that a transfer for less than fair market value was for eligibility purposes until the client or spouse provides convincing evidence that there was no reason to believe MA LTC services might be needed. BEM 405, p. 11.

The amount of equity in the home would place Petitioner over the asset limit for the Extended Care MA program (MA for those in LTC). BEM 400, p. 8. Petitioner's AHR testified that she was unsure as to why the equity in the home was gifted to her brother. However, Petitioner stated that she was aware that income/assets could affect Petitioner's MA eligibility. Therefore, Petitioner's AHR did not overcome the assumption that there was no reason to believe that MA LTC services would not be needed, and a divestment occurred.

Petitioner's AHR argued that the Department erred in calculating Petitioner's divestment penalty period, as there was no uncompensated value. Petitioner's AHR presented documents showing that Petitioner's son was responsible for all of the closing costs, including the delinquent property taxes, which totaled \$17,411 (Exhibit 1, pp. 1-2). Petitioner's AHR also stated that no repairs were made to the home prior to, or during the closing period. Petitioner's AHR presented an assessment of the repairs that would need to be completed on the home, which totaled \$15,951.47 (Exhibit 1, p. 3). Petitioner's AHR argued that the repairs would have been needed to be made before listing the home on the open market. Petitioner contended that had the home been sold on the open market, Petitioner would have been responsible for the costs.

When determining a divestment penalty period, the Department will first determine the uncompensated value of the resources divested. BEM 405, p. 12. The uncompensated value of a divested resource is the resource's cash or equity value minus the compensation received. BEM 405, p. 15; 42 USC 1396p(c)(1)(E)(1)(i)(I); State Medicaid Manual § 3258.1(A)(3). The Department will then divide the uncompensated value by the average monthly private LTC cost in Michigan for the client's baseline date. BEM 405, p. 13. This will give the number of full months for the penalty period. BEM 405, p. 1. The Department will multiply the fraction remaining by 30 to determine the number of days for the penalty period in the remaining partial month. BEM 405, p. 13. The LTC cost with a baseline date in 2018 is \$8,261.

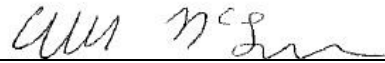
Department policy as well as federal law reduces the value of the divestment by *compensation received*, **not** expenses incurred. Therefore, the fact that there were transaction costs in the sale of the home did not affect the amount of the divestment. Consequently, the uncompensated value of the transfer is the full \$38,332.57 gift of

equity. The full gift of equity divided by the LTC costs in 2018 results in a divestment penalty period of 4.64 months. Thus, the Department acted in accordance with policy when it found Petitioner was subject to a divestment period of June 1, 2019 through October 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 subject Petitioner to a divestment penalty period of June 1, 2019 through October 19, 2019. Accordingly, the Department's decision is **AFFIRMED**.

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**Ellen McLemore**

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

**Via Email:**

MDHHS-Kent-1-Hearings  
D. Smith  
EQAD  
BSC3- Hearing Decisions  
MOAHR

**Petitioner – Via First-Class Mail:**

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