



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: August 15, 2019
MOAHR Docket No.: 19-005873
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 July 17, 2019, from Detroit, Michigan. The Petitioner was represented by [REDACTED], Authorized Hearing Representative (AHR). The Department of Health and Human Services (Department) was represented by Joann Sepic, Assistance Payments Supervisor and Kathy Laditka, Eligibility Specialist.

ISSUE

Did the Department properly determine that Petitioner was subjected to a Medical Assistance (MA) divestment penalty?

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], 2019, an application for MA benefits was submitted on behalf of Petitioner which revealed the existence of an annuity.
2. On March 11, 2019, the Department sent Petitioner a Health Care Coverage Supplemental Questionnaire.
3. Petitioner confirmed the existence of the annuity on the submitted questionnaire.
4. On April 17, 2019, Petitioner provided verification of the annuity was submitted.

5. The annuity was evaluated by Respondent's office of Legal Services which determined that because Michigan was not listed as a remainder beneficiary, a divestment had occurred.
6. On May 10, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice which notified Petitioner that she was subject to a divestment penalty which would begin on June 1, 2019 and end on December 28, 2019.
7. On May 30, 2019, 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

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.

Divestment is a type of transfer of a resource and not an amount of resources transferred. Resource means all the client's assets and income. Transferring a resource means giving up all or partial ownership in the resource. Cash in bank accounts is an asset. Thus, giving away cash, is divestment. Divestment results in a penalty period, not MA program ineligibility. BEM 405 (January 2019), pp. 1-2. BEM 400 (February 2019), p.1. During the penalty period, MA will not pay the client's cost for: LTC services; home

and community-based services; home help; or home health. MA will pay for other MA-covered services. BEM 405, p.1. A divestment is a transfer of a resource by a client that is (i) within a specified time (the look-back period), (ii) for less than fair market value (FMV), and (iii) not an excluded transfer. BEM 405, p. 1.

To determine if an asset transfer qualifies as divestment, the baseline date must first be established. A person's baseline date is the first date that the client was eligible for MA and one of the following: in LTC; approved for the waiver; eligible for home health services; or eligible for home help services. BEM 405, p. 6. Transfers that occur on or after a client's baseline date must be considered for divestment. In addition, once the baseline date is established, the Department will determine the look-back period, which is 60 months prior to the baseline date for all transfers made after February 8, 2006. BEM 405, p. 5. In this case, the base line date is March 2019 as that is the date Petitioner was approved for MA benefits and according to her daughter's testimony approximately the timeframe in which she began receiving home health services.

At the hearing, the Department testified that the annuity was reviewed by Teresa Ellis in its Offices of Legal Services. Ms. Ellis authored a memo dated April 26, 2019 which indicated that although the annuity is actuarially sound, it failed to list the State of Michigan as a remainder. (Exhibit A, pp. 41-42). Under Department policy, if the annuity was purchased or amended by, or on behalf of, the applicant or recipient on or after February 8, 2006 the State of Michigan must be named as the remainder beneficiary in the first position, or as the second remainder beneficiary after the community spouse or minor or disabled child, for an amount at least equal to the amount of the Medicaid benefits paid on behalf of the institutionalized individual. BEM 401 (May 2018), pp. 5-6). An institutionalized individual includes a person receiving appropriate home and community based services specified under the approved state waiver. BEM 106 (October 2018), p. 4. As previously stated, the annuity in question was issued after the February 8, 2006 date and therefore Michigan is required to be listed as a remainder beneficiary. After reviewing the terms of the annuity, the State of Michigan is not listed as a remainder beneficiary and thus the entire amount of the annuity is considered a divestment.

Because the Department established that a divestment occurred, 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 June 1, 2019 and December 28, 2019. The Department stated that in computing the penalty period, it multiplied the amount Petitioner receives each month from the annuity, which is \$918.79 by the number of months remaining at the time of application, which was 65 for a total amount of \$59,721.35. (Exhibit A, p. 51). Once the total 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 \$59,721.35 total uncompensated value of the divested resources and an

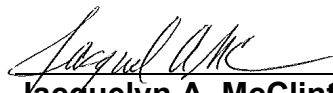
\$8,469.00 average monthly private LTC cost in Michigan applicable to Petitioner's 2019 baseline date, the divestment penalty is seven months and one day. Therefore, upon review, the Department properly applied a divestment penalty from June 1, 2019 through December 28, 2019.

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 processed Petitioner's MA eligibility and determined that he was subject to a divestment penalty for the period from June 1, 2019 through December 28, 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 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-Berrien-Hearing
BSC3 Hearing Decisions
EQAD
D. Smith
MOAHR

Petitioner – Via USPS

[REDACTED]

Authorized Hearing Rep. – Via USPS

[REDACTED]