



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: September 13, 2019
MOAHR Docket No.: 19-007519
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

AMENDED 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 August 13, 2019, from Lansing, Michigan. The Petitioner was represented by Attorney Andrew Byers, P#55971. The Department of Health and Human Services (Department) was represented by Maxine Coleman, Long Term Care Eligibility Specialist.

ISSUE

1. Did the Department properly determine the divestment penalty for Medical Assistant (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. On [REDACTED], Petitioner applied for MA Long Term Care (LTC) with a retroactive application to January 2019, where she reported a purposeful divestment of \$ [REDACTED] to an irrevocable trust. Department Exhibit 1, pgs. a-i.
2. On May 13, 2019, the Department Caseworker sent Petitioner a Health Care Coverage Determination Notice, DHS-1606, indicating Petitioner was eligible for MA LTC from December 1, 2018, through February 28, 2019, and from March 1, 2019, ongoing with a \$1,552,000 monthly patient pay. Department Exhibit 1, pgs. 15-17.

3. On July 1, 2019, the Department received a hearing request from Petitioner's Attorney, 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.

BEM 405, pgs. 14-15

Computing Penalty Period

The penalty period starts on the date which the individual is eligible for Medicaid and would otherwise be receiving institutional level care (LTC, MIChoice waiver, or home help or home health services), and is not already part of a penalty period. When a medical provider is paid by the individual, or by a third party on behalf of the individual, for medical services received, the individual is not eligible for Medicaid in that month and the month is not a penalty month. That month cannot be counted as part of the penalty period. This does not include payments made by commercial insurance or Medicare.

Note: If a past unreported divestment is discovered or an agency error is made which should result in a penalty, a penalty must be determined under the policy in place at the time of discovery. If a penalty is determined for a transfer in the past, apply the penalty from the first day after timely notice is given; see Recipient Exception in this item.

**Recipient
Exception**

Timely notice must be given to LTC recipients and (BEM 106) waiver recipients before actually applying the penalty. Adequate notice must be given to new applicants.

In this case, Petitioner reported the intentional divestment when she applied for MA LTC on March 28, 2019. As a result, the Department was put on notice of the divestment and the amount on March 28, 2019. The Department has not put a divestment penalty in the system. The amount divested was \$ [REDACTED] which should result in a divestment penalty of 7 months and 8 days. The divestment should start when Petitioner reported to the Department the intentional divestment on March 28, 2019. In addition, Petitioner's daughter is paying her back on a loan based on a promissory note from February 1, 2019, through July 1, 2019, in the amount of \$ [REDACTED] BEM 400.

This Administrative Law Judge notes that the divestment penalty date should be March 28, 2019 when Petitioner reported the intentional divestment to the Department with her application filed on March 28, 2019. She was determined eligible for retroactive MA from December 1, 2018, through February 28, 2019, which is an error because she only applied for retroactive MA to January 1, 2019. In addition, she received payment from a promissory note from February 1, 2019, through July 1, 2019, of \$ [REDACTED]. The loan payment on February 1, 2019, would give excess assets for the month of February 2019 and she would not be eligible for MA LTC. The divestment period should start in March 1, 2019, through October 9, 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 did not act in accordance with Department policy when it failed to implement a divestment penalty of March 1, 2019, through October 9, 2019, for a MA LTC application filed on March 28, 2019, with an intentional divestment. Petitioner is eligible for MA LTC retroactive for the month of January 2019, but not February 2019 due to the repayment of a promissory note of a monthly payment on February 1, 2019, of \$ [REDACTED] which gives her excess assets for the month of February 2019.

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 BRIDGES FIX IT ticket to implement a divestment penalty period of March 1, 2019, through October 9, 2019, for a MA LTC application filed on

March 28, 2019, with an intentional divestment. Petitioner is eligible for MA LTC retroactive for the month of January 2019, but not February 2019 due to the repayment of a promissory note of a monthly payment on February 1, 2019, of \$ [REDACTED] which gives her excess assets for the month of February 2019.

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

CF/hb



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

Linda Gooden
25620 W. 8 Mile Rd
Southfield, MI 48033

Oakland County (District 3), DHHS

BSC4 via electronic mail

D. Smith via electronic mail

EQADHShearings via electronic mail

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Petitioner

[REDACTED]
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