



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: September 20, 2019
MOAHR Docket No.: 19-008704
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 September 5, 2019, from Detroit, Michigan. The Petitioner was represented by Andrew Byers, Esq. The Department of Health and Human Services (Department) was represented by Nina Kossak, Eligibility Specialist.

ISSUE

Did the Department properly change the divestment penalty period?

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 applied for Medical Assistance (MA) benefits on [REDACTED], 2018.
2. Based on the application, the Department determined that Petitioner was subject to a divestment penalty of 4 months and 3 days.
3. The divestment penalty should have begun on June 1, 2018.
4. On July 23, 2018, the Department sent Petitioner a Health Care Coverage Determination Notice which notified Petitioner that she was eligible for MA coverage.
5. MA benefits were paid to the facility in which Petitioner was residing in for June 2018.

6. Although the Department calculated the divestment penalty duration, it did not implement the divestment penalty period.
7. The Department realized its error in May 2019.
8. On May 20, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice which notified Petitioner that the divestment penalty period would begin on July 1, 2019 and end on September 3, 2019.
9. On June 28, 2019, Petitioner's counsel submitted a request for hearing disputing the Department's 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.

Additionally, divestment is a type of transfer of a resource and not an amount of resources transferred. Divestment means a transfer of a resource (see RESOURCE DEFINED below and in glossary) by a client or his spouse that are all of the following:

- Is within a specified time; see LOOK-BACK PERIOD in this item.
- Is a transfer for LESS THAN FAIR MARKET VALUE; see definition in glossary.
- Is not listed below under TRANSFERS THAT ARE NOT DIVESTMENT BEM 405 (April 2018), p. 1.

Further, during the penalty period, MA will **not** pay the client's cost for:

- Long Term Care (LTC) services.
- Home and community-based services.
- Home help.
- Home health. *Id.*

In this case, Petitioner applied for MA benefits on June 28, 2018. At the time of application, Petitioner disclosed all documentation regarding any transfers that had been made. The Health Care Coverage Determination Notice sent to Petitioner on July 23, 2018, indicated that Petitioner was eligible for MA benefits effective June 1, 2018. Under Department policy, the penalty period starts on the date which the individual is eligible for Medicaid and would otherwise be receiving institutional level care and is not already part of a penalty period. BEM 405, p. 14. Therefore, the penalty period should have begun on June 1, 2018. The parties agree that there was a transfer which constituted a divestment. Additionally, the parties agree that the duration of the divestment penalty is 4 months and 3 days.

At the hearing, the Department conceded that the correct divestment penalty period should have run from June 1, 2018 through October 2018. However, the Department stated that the divestment penalty period was not recognized in its computer system in June 2018. The Department testified that the MA benefits were paid to the facility in which Petitioner is residing for the month of June 2018 but was not paid during the remainder of the original divestment penalty period. Petitioner's counsel agreed that since benefits were paid to the LTC for June 2018, the divestment penalty period should have begun on July 1, 2018 and should have ended on or about November 3, 2018.

The Department testified that in May 2019, it discovered that the divestment penalty period had not been implemented. As a result, it sent Petitioner a Health Care Coverage Determination Notice which notified Petitioner that the divestment penalty period would begin on July 1, 2019 and end on September 3, 2019. However, as previously stated, the penalty period is required to begin when Petitioner became eligible for MA benefits which was June 2018. However, in this case, Petitioner's counsel agreed to a penalty start date of July 1, 2018 as MA benefits had already been paid.

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 begin the divestment penalty period on July 1, 2018.

DECISION AND ORDER

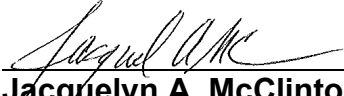
Accordingly, the Department's decision is **REVERSED**.

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. Recalculate the divestment penalty period with a start date of July 1, 2018;

2. If Petitioner was entitled to supplements, issue MA supplements Petitioner was entitled to receive but did not; and
3. Notify Petitioner and her attorney of its decision.

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-Oakland-II-Hearings
BSC4 Hearing Decisions
EQAD
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Petitioner

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