



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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████████████████████, MI ██████████

Date Mailed: August 19, 2020
MOAHR Docket No.: 20-003710
Agency No.: ██████████
Petitioner: ██████████ ██████████

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 1, 2020, from Lansing, Michigan. The Petitioner was represented by her attorney Terri Winegarden. Petitioner's son ██████████ ██████████ appeared and testified at hearing. The Department of Health and Human Services (Department) was represented by Assistant Attorneys General Jennifer Walker and Stephanie Service. Department Exhibit 1, pp. 1-41 was received and admitted. Both parties filed briefs that were received and reviewed by the undersigned Administrative Law Judge.

ISSUE

Did the Department properly determine that Petitioner divested assets and impose 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. On ██████████ ██████████ 2020, Petitioner applied for Long Term Care Medical Assistance (MA-LTC).
2. On April 9, 2020, A Health Care Coverage Determination Notice was sent to Petitioner informing her that she was eligible for MA-LTC with a divestment penalty period from February 1, 2020, through February 29, 2020.

3. On April 16, 2020, Petitioner requested hearing disputing the determination of divestment and imposition of divestment penalty period.
4. On October 10, 2013, Petitioner signed an Irrevocable Stock or Bond power transferring shares of stock to herself and her son as joint tenants. (Ex. 1, p.27)
5. On February 6, 2020, Petitioner's son [REDACTED] [REDACTED] signed an affidavit declaring that he was a joint owner of stock with Petitioner and he was refusing to sell the stock. (ex. 1, p.30)

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.

TRANSFER OF A RESOURCE

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. **Not** all transfers are divestment. Examples of transfers include:

- Selling an asset for fair market value (not divestment).
- Giving an asset away (divestment).
- Refusing an inheritance (divestment).
- Payments from a **MEDICAID TRUST** that are **not** to, or for the benefit of, the person or his spouse; see BEM 401 (divestment).
- Putting assets or income in a trust; see BEM 401.
- Giving up the **right** to receive income such as having pension payments made to someone else (divestment).
- Giving away a lump sum or accumulated benefit (divestment).
- Buying an annuity that is **not** actuarially sound (divestment).
- Giving away a vehicle (divestment).
- Putting assets or income into a Limited Liability Company (LLC)
- Purchasing an asset which decreases the group's net worth and is not in the group's financial interest (divestment). BEM 400

Joint Owners and Transfers

When a client jointly owns a resource with another person(s), any action by the client or by another owner that reduces or eliminates the client's ownership or control is considered a transfer by the client. BEM 400

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.

Note: For Freedom To Work determinations, jointly owned assets are considered to belong to the initial person.

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. BEM 400

Joint Owners and Transfers

When a client jointly owns a resource with another person(s), any action by the client or by another owner that reduces or eliminates the client's ownership or control is considered a transfer by the client.

Example: Mr. Jones is applying for MA. In 2005, he added his sister's name to his bank account. Each is free to withdraw as much money as desired so adding the sister's name did **not** affect the client's ownership or control. On September 1, 2007, the sister withdrew \$10,000 and deposited the money in her own bank account. Mr. Jones is considered to have transferred \$10,000 on September 1, 2007, the day he no longer had ownership and control of his money.

Example: Mr. Jones is applying for MA. On September 1, 2007, Mr. Jones gave his sister half interest in real estate. His equity value at the time was \$100,000. The ownership arrangement prevents either sibling from selling without the other's permission. Mr. Jones transferred a resource on September 1, 2007, the day he reduced his ownership and control by giving his sister part ownership and the power to prevent sale. The amount transferred depends on whether his sister is refusing to sell. The transferred amount is:

Example:

- \$100,000 if she now refuses to sell.

Note: The transferred amount is used to calculate the divestment penalty. It is not used towards the countable asset limit for Mr. Jones' eligibility.

- \$50,000 if she now agrees to sell.

Note: Unless otherwise excluded, one-half the equity for the month being tested is a countable asset for purposes of Mr. Jones' asset eligibility and the other half is used to calculate the divestment penalty.

The same policy applies to resources the client's spouse owns jointly with other persons.

Exception: No penalty is imposed if the parties involved verify that the resource transferred actually belonged solely to the person to whom it was transferred.

BEM 405

In this case, Petitioner inherited an interest in a stock and then transferred ownership of the stock to herself and her son as joint tenants on October 10, 2013. This transfer took place more than five years prior to the MA-LTC application and therefore prior to the look back period. Petitioner's position is that the stock is held jointly and requires consent from the co-owner to sell the stock. The co-owner has refused to consent to the sale of the stock, therefore, the asset is unavailable to Petitioner and therefore should not be counted in determining asset eligibility. Petitioner asserts that the action she took with regard to the stock was in October 2013, prior to the look back period. Petitioner cites BEM 400 and section 3158.7 of the Medicaid Manual in support of her position.

The Department's position is that when [REDACTED] [REDACTED] refused to sell the jointly held stock on February 6, 2020, that eliminated Petitioner's ownership and control and is considered a transfer on that date according to Department policy. The Department asserts that this transfer that took place on February 6, 2020, and therefore was within the look back period and is divestment. The Department points out that Petitioner's son [REDACTED] [REDACTED] was apparently unaware of his stock ownership interest prior to that date and signed no affidavits prior to that date and made no assertions that he would refuse to sell the stock prior to February 2020. The Department cites BEM 405 in support of their position. The Department's position is that 50% of the value of the stock at the time of application is divestment and attributable to Petitioner, totaling \$8,400.

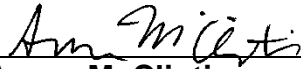
Petitioner transferred stock ownership from herself to herself and her son as joint tenants on October 10, 2013. Both sides are in agreement that this transfer was prior to the look back period. The issue in dispute is what effect does Petitioner's son's affidavit signed on February 6, 2020, have. Prior to [REDACTED] [REDACTED] signing the affidavit, Petitioner had the potential to realize the proceeds of the stock. She could have sold the stock with consent of her son. When [REDACTED] [REDACTED] signed the affidavit on February 6, 2020, that action eliminated Petitioner's control of the stock. Department policy states that when an action by a joint owner eliminates the client's control over the asset then that is considered to be a transfer by the client. BEM 405 Therefore, the Department's determination that the February 6, 2020, affidavit eliminating Petitioner's control over the stock was a transfer was proper and correct and consistent with Department policy BEM 405 and the Medicaid Manual section 5258.7.

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 divestment had occurred in the amount of \$8,400 and imposed divestment penalty period of one month from February 1, 2020, to February 29, 2020.

DECISION AND ORDER

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

AM/hb



Aaron McClintic
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

Charlevoix County via electronic mail

BSC1 via electronic mail

D. Smith via electronic mail

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Petitioner

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