



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: July 28, 2020
MOAHR Docket No.: 20-004065
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; 42 CFR 431.200 to 431.250; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on July 23, 2020. Petitioner, [REDACTED], had her Authorized Hearing Representative, [REDACTED], appear on her behalf. Respondent, Department of Health and Human Services (Department), had Jerica Hall, Assistance Payments Supervisor, appear as its representative. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 25-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Did the Department properly determine that Petitioner was subject to a penalty period through October 14, 2020, for a divestment?

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 September 26, 2016, Petitioner sold a home that she owned jointly. The home was sold for \$182,000.00, and Petitioner received [REDACTED] for her share of the proceeds.
2. After Petitioner sold her home, Petitioner moved in with her son and daughter-in-law.

3. From May 2016 through July 2019, a total of \$64,628.60 was spent for construction on Petitioner's son's home to make it suitable for Petitioner to live there.
4. Petitioner does not have an ownership interest in her son's home.
5. On March 12, 2020, Petitioner was admitted to a hospital.
6. On March 22, 2020, Petitioner was transferred to a long-term care facility, [REDACTED]
7. Petitioner has Medicaid.
8. Petitioner paid [REDACTED] \$1,275.00 for services.
9. The Department reviewed Petitioner's case when she was transferred to [REDACTED] and the Department determined that Petitioner was subject to a penalty period through October 14, 2020, because she transferred an asset for less than fair market value within 60 months prior to the date she was admitted to [REDACTED]. The Department determined that the total value of the asset transferred was \$64,628.60, and the Department determined that the uncompensated value of the transfer was \$63,551.56. The uncompensated value is equal to the amount spent on renovations of her son's home, minus the amount paid to [REDACTED].
10. On April 22, 2020, the Department mailed a healthcare determination notice to Petitioner to notify her that she was subject to a penalty period through
11. October 14, 2020, because she transferred an asset for less than fair market value.
12. On May 15, 2020, Petitioner requested a hearing to dispute 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 administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, the Department determined that Petitioner transferred \$64,628.60 for less than fair market value because the proceeds from the sale of her home were used to pay for construction costs on her son's home and she did not receive any ownership interest. Petitioner disputes the Department's determination and argues that spending the money on construction costs and staying with her son was a more economical option than paying to stay in a long-term care facility.

The issue here is whether the Department properly determined that the use of the proceeds from the sale of Petitioner's home resulted in a divestment. A divestment is a transfer of a resource that (a) occurs within 60 months of the date an individual is eligible for Medicaid and in a long-term care facility, approved for home care, or approved for MI Choice; (b) is for less than fair market value; and (c) is not specifically excluded from the definition of a divestment. BEM 405 (January 1, 2020), p. 1. It is undisputed that the proceeds from the sale of Petitioner's home were used within 60 months of the date she was eligible for Medicaid and in a long-term care facility, so the first criterion is met. It is the other two criteria that require further analysis.

Did Petitioner transfer the proceeds from the sale of her home for less than fair market value when she used them to pay for construction costs on her son's home and received no ownership interest in the home? Less than fair market value means what was received in exchange for the resource was less than what could have been received for the resource in an arm's length transaction. *Id.* at 6. In this case the resource was \$64,628.60 that was used for construction costs on her son's home. Although Petitioner lived in the home where the construction costs were incurred, and her son and daughter-in-law likely provided care for her in the home, there was no written agreement to pay for rent or care. Since there was no agreement for Petitioner to pay for rent or other services, those cannot be considered as something received in exchange for the amount spent on construction costs. Petitioner did not receive any ownership interest in the home where the construction costs were incurred, and there was no evidence that Petitioner received anything else in exchange, so I must conclude that Petitioner did not receive anything of value in exchange. Therefore, Petitioner transferred the proceeds from the sale of her home for less than fair market value, so the second criterion is met.

Was Petitioner's transfer specifically excluded from the definition of a divestment? In general, transfers that are excluded from the definition of a divestment are transfers to a spouse, transfers to a blind or disabled child, transfers to a funeral plan, transfers to purchase new assets for fair market value, and transfers for less than fair market value which the Petitioner has convincing evidence were for purposes other than qualifying for Medicaid. *Id.* at 11. The only exception that could apply to Petitioner's transfer is the last catchall. For this exception, an individual is required to present convincing evidence to overcome the presumption that a transfer was for the purpose of qualifying for Medicaid. Petitioner did not present convincing evidence to overcome the

presumption. Therefore, Petitioner's transfer was not specifically excluded from the definition of a divestment, so the last criterion is met.


Since all the criteria for a transfer to be considered a divestment have been met, the Department properly determined that the use of the proceeds from the sale of Petitioner's home resulted in a divestment. A divestment results in a penalty period during which Medicaid will not pay for long-term care. *Id.* at 1. The duration of the penalty period is determined by dividing the uncompensated value of the transfer by the average monthly cost for private long-term care. *Id.* at 12-13. The uncompensated value of the transfer was \$63,551.56, and the average monthly cost for private long-term care was \$8,618.00. *Id.* at 13. Thus, Petitioner's penalty period is seven months and 12 days. The penalty period begins from the date that an individual is eligible for Medicaid and in a long-term care facility. *Id.* at 13. Petitioner was admitted to a long-term care facility on March 22, 2020, and the Department determined that Petitioner's penalty period should run through October 14, 2020. There is no evidence that Petitioner's penalty period should have been any shorter than what the Department determined.

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 act in accordance with its policies and the applicable law when it determined that Petitioner was subject to a penalty period through October 14, 2020, for a divestment.

IT IS ORDERED the Department's decision is AFFIRMED.

JK/ml



Jeffrey Kemm
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

Kelly Sutherland – Via Electronic Mail

Livingston County DHHS – Via Electronic Mail

BSC4 – Via Electronic Mail

D. Smith – Via Electronic Mail

EQAD – Via Electronic Mail

Petitioner

[REDACTED], MI [REDACTED]

Authorized Hearing Rep.

[REDACTED] MI [REDACTED]