



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: August 4, 2020
MOAHR Docket No.: 20-004071
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, telephone hearing was held on July 28, 2020. Petitioner was represented by her authorized hearing representative [REDACTED] [REDACTED] Natalie Hurdman and Carly Ostlund represented the Department.

ISSUE

Did the Department of Health and Human Services (Department) properly determine that long term care benefits are subject to a 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] [REDACTED] the Department received Petitioner's Redetermination (DHS-4574) form. Exhibit A, pp 7-12.
2. On March 2, 2020, the Department received verification that Petitioner had transferred a 2005 Honda Accord to her grandson for \$ [REDACTED] Exhibit A, p13.
3. The Department determined that the value of a 2005 Honda Accord in rough condition is \$ [REDACTED] from the National Automobile Dealers Association website. Exhibit A, pp 19-23.
4. On March 9, 2020, the Department notified Petitioner that she was eligible for Medical Assistance (MA) with a \$1,295 patient pay amount as of April 1, 2020. Exhibit A, pp 27-32.

5. The Department determined that Petitioner's long-term care benefits were subject to a 4-day divestment penalty. Exhibit A, p 15.
6. On [REDACTED] [REDACTED] the Department received Petitioner's request for a hearing protesting the divestment penalty applied towards her long-term care benefits. Exhibit A, pp 3-5.

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.

Assets means cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. Personal property is any item subject to ownership that is not real property. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (January 1, 2020), pp 1-7.

The value of a vehicle is its equity value. Equity value is the fair market value minus the amount legally owed in a written lien provision. BEM 400, p 40.

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Divestment results in a penalty period in MA, not ineligibility. Divestment is a type of transfer of a resource and not an amount of resources transferred. Divestment means a transfer of a resource by a client or his spouse that are all of the following:

- Is within a specified time, which is 60 months prior to placement in an LTC facility.
- Is a transfer for less than fair market value.
- Is not listed below under transfers that are not divestment.

Department of Health and Human Services Bridges Eligibility Manual (BEM) 405 (January 1, 2020), pp 1-6.

On March 2, 2020, the Department received verification that Petitioner had sold a 2005 Honda Accord to her grandson for \$[REDACTED]. The Department determined that the fair market value of the 2005 Honda Accord was \$[REDACTED] from the National Automobile Dealers Association (NADA) website as directed by policy. BEM 400, p 65-66.

The Department determined that this transfer met the definition of divestment because Petitioner had transferred an asset for less than the fair market value of that asset. The Department's determined that Petitioner's Long Term Care benefits would be subject to a 4-day divestment penalty by dividing the difference between the fair market value of the 2005 Honda Accord and the purchase price by the average monthly cost of long-term care. This resulted in a 4-day divestment penalty.

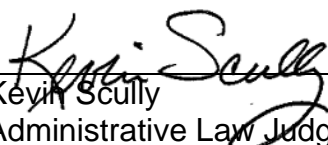
Petitioner's representative argued that the fair market value of Petitioner's 2005 Honda Accord was less than \$[REDACTED] because the vehicle requires considerable repair but failed to offer evidence supporting a finding of a lesser value.

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 Petitioner's Long Term Care would be subject to a 4-day divestment penalty.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/nr



Kevin Scully
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

Kimberly Myers
234 West Baraga Ave.
Marquette, MI 49855

Marquette County DHHS- via electronic mail

BSC1- via electronic mail

D. Smith- via electronic mail

EQAD- via electronic mail

[REDACTED] - via first class mail

[REDACTED]
[REDACTED], MI [REDACTED]

Authorized Hearing Rep.

[REDACTED] - via first class mail

[REDACTED]
[REDACTED] MI [REDACTED]