



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: October 21, 2020
MOAHR Docket No.: 20-005248
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 September 23, 2020, from Lansing, Michigan. The Petitioner was represented by her son and authorized representative ██████████ ██████████. The Department of Health and Human Services (Department) was represented by Eric Carlson Assistance Payment Supervisor. Department Exhibit 1, pp. 1-70 was received and admitted.

ISSUE

Did the Department properly determine that Petitioner was required to serve a 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 ██████████ ██████████ 2018, Petitioner applied for MA-LTC.
2. On January 11, 2019, Petitioner was approved for MA-LTC effective November 1, 2018, with a divestment penalty period from November 1, 2018 through November 18, 2019.
3. On February 22, 2019, Petitioner was discharged from long term care after having served 3 months and 22 days of her divestment penalty period.
4. On June 4, 2020, Petitioner was admitted to long term care.
5. On ██████████ ██████████ 2020, Petitioner applied for MA-LTC.

6. On July 17, 2020, a Health Care Coverage Determination Notice was sent to Petitioner informing her that she must serve a divestment penalty period from June 4, 2020, through March 4, 2021. (Ex.1, pp. 66-70)
7. On July 20, 2020, Petitioner requested a hearing disputing the finding of divestment and imposition of divestment penalty period.

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.

Computing Penalty Period

Compute the penalty period on the total Uncompensated Value of all resources divested. Determine the Uncompensated Value for each resource transferred and combine into a total Uncompensated Value. Divide the total Uncompensated Value by the average monthly private LTC Cost in Michigan for the client's Baseline Date. This gives the number of full months for the penalty period. Multiply the fraction remaining by 30 to determine the number of days for the penalty period in the remaining partial month. Apply the total penalty months and days. Apply a penalty even if the total amount of the penalty is for only a partial month. Apply the penalty to the months (or days) an individual is eligible for Medicaid and actually in LTC, Home Health, Home Help, the MIChoice Waiver, do not apply the divestment penalty to a period when the individual is not eligible for Medicaid for any reason (that is the case closes for any reason or is eligible for Medicaid but is not in LTC, Home Help, Home Health, the MIChoice Waiver. Restart the penalty when the individual is again eligible for Medicaid and in LTC, Home Help, Home Health, the MIChoice Waiver. When a medical provider is paid by the individual, or by a third party on behalf of the individual, for medical services received, that month is not a penalty month. Do not count that month as part of the penalty period. This does not include payments made by commercial insurance or Medicare; see Resources Returned in this item. Note: An individual is not eligible for MA in a month they have prepaid for LTC. Because federal law directs a resident in a nursing facility must have access to all monies held by the facility for the resident, count the money held by a nursing facility as cash. A group 2 deductible eligible individual is not eligible for Medicaid until the deductible is met. Apply the penalty only to the days of the month after the deductible is met. The 1st day the client is eligible to receive MA

coverage for LTC, MIChoice, home help, or a home health service, is the 1st day after the penalty period ends. BEM 405

In this case, Petitioner argued that the look back period should begin with the most recent application on ██████████ 2020. If the look back period began with the most recent application, then Petitioner's disposal of assets would be outside the 60-month look back period.

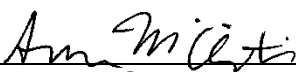
However, Department policy requires that divestment penalty period be served when a recipient re-enters long term care and is otherwise eligible for MA-LTC. Petitioner did not serve her complete divestment penalty period during her first stay in long term care. BEM 405 specifically instructs "Restart the penalty when the individual is again eligible for Medicaid and in LTC, Home Help, Home Health, the MIChoice Waiver." (BEM 405, p.13)

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 imposed a divestment penalty period.

DECISION AND ORDER

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

AM/nr



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

Pamela Wells
915 Diana St.
Ludington, MI
49431

Mason County DHHS- via electronic mail

BSC3- via electronic mail

D. Smith- via electronic mail

EQAD- via electronic mail

Petitioner

██████████ - via first class mail
██████████
██████████, MI
██████████

Authorized Hearing Rep.

██████████ - via first class mail
██████████
██████████, MI
██████████