



STATE OF MICHIGAN

GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: November 5, 2020  
MOAHR Docket No.: 20-005409  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Colleen Lack

**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 24, 2020. [REDACTED], represented the Petitioner. [REDACTED] appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by Rebecca Ferrill, Assistance Payments Supervisor.

During the hearing proceeding, the Department’s Hearing Summary packet was admitted as Exhibit A, pp. 1-30 and Petitioner’s additional documentation was admitted as Exhibit 1, pp. 1-2.

**ISSUE**

Did the Department properly determine Petitioner’s eligibility for Medical Assistance (MA)?

**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] 2020, the Department received a Medicaid application for Petitioner. Included was a notice of assessment for the MI Choice Waiver showing a start date of December 13, 2019. (Exhibit A, p. 1)
2. On March 5, 2020, a Health Care Coverage Determination Notice was issued stating Medicaid was approved effective December 1, 2019, with varying monthly deductible amounts. (Exhibit pp. 23-26)

3. On April 9, 2020, the MI Choice Waiver Agency entered Petitioner's Special Medicaid Approval eligibility begin date as April 9, 2020. (Exhibit A, p. 1)
4. On April 11, 2020, a Health Care Coverage Determination Notice was issued approving Medicaid but imposing a divestment penalty period from April 1, 2020 through November 20, 2020 utilizing a baseline date of April 9, 2020. (Exhibit A, pp. 8-10 and 27-29)
5. On August 10, 2020, the local Department office received<sup>1</sup> the hearing request filed on Petitioner's behalf contesting the MA eligibility determination, specifically to correct the date of the divestment penalty period. (Exhibit A, pp. 3-21)

### **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 Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

BEM 405 addresses Medicaid divestment and baseline dates:

#### **Baseline Date**

A person's baseline date is the first date that the client was eligible for Medicaid and one of the following:

- In LTC.
- APPROVED FOR THE WAIVER; see BEM 106.
- Eligible for Home Health services.
- Eligible for Home Help services

BEM 405, January 1, 2020, p. 6

BEM 106 addresses approval for the MI Choice Waiver:

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<sup>1</sup> Petitioner's hearing request was initially received by the Michigan Office of Administrative Hearings and Rules on July 13, 2020. (Exhibit A, p. 4)

## APPROVED FOR THE WAIVER

Approved for the waiver means:

- The agent conducted the assessment, **and**
- There is an available wavier slot for the individual's placement **and**
- A person-centered plan of service has been developed **and**
- The participant has received services for more than 30 days or is currently receiving services that are expected to continue more than 30 days, or expects to receive supports coordination services from the agent with appropriate waiver services for at least 30 consecutive days.

BEM 106, July 1, 2019, pp. 2-3.

The Assistance Payments Supervisor explained that Medicaid eligibility had to be approved first in the Department's Bridges system, prior to the MI Choice Waiver Agency being able to update the CHAMPS system to show Petitioner's begin date for services. Eligibility Specialists at the local Department office are no longer able to enter special Medicaid approvals or Level of Care codes because this is now a function of the Medicaid providers in the CHAMPS system. On April 9, 2020, the MI Choice Waiver Agency entered Petitioner's Special Medicaid Approval eligibility begin date as April 9, 2020. (Exhibit A, p. 1; Assistance Payments Supervisor Testimony) Accordingly, on April 11, 2020, a Health Care Coverage Determination Notice was issued approving Medicaid but imposing a divestment penalty period from April 1, 2020 through November 20, 2020, utilizing a baseline date of April 9, 2020. (Exhibit A, pp. 8-10 and 27-29)

The local Department office contacted their Help Desk and were advised to notify the MI Choice Waiver Agency that they have to call provider support and have the Waiver Enrollment/Approval date corrected in CHAMPS. If it does not interface, then the MI Choice Waiver Agency should send a corrected PDF to the DHHS Eligibility Specialist so that the Bridges Resource Center can be contacted back to correct the record. (Exhibit A, p. 1; Assistance Payments Supervisor Testimony)

Petitioner's attorney explained that Petitioner was initially evaluated by the MI Choice Waiver Agency on December 13, 2019, and it was found that Petitioner was eligible for MI Choice. A second assessment was completed on April 9, 2020, and this was the date that was entered into the system. However, they believe that the divestment penalty should begin on December 13, 2019, when Petitioner's eligibility for the MI Choice Waiver was initially determined. The Waiver Agency has not made this correction and indicated they would not or could not change the date. Therefore,

Petitioner is asking for an order from this hearing to change the baseline date and divestment penalty period.

Petitioner provided a copy of the Initial Asset Assessment Confirmation of MI Choice Waiver Approval indicating Petitioner's approval for the MI Choice Waiver as of the December 13, 2019, assessment date. This document specifically referenced two of the BEM 106 criteria regarding approval for the waiver: the waiver agency conducted the assessment; and the person received, or expects to receive, supports coordination services from the waiver agency with appropriate waiver services for at least 30 consecutive days. (Exhibit 1, p. 2) It appears that this may be referencing an older version of the BEM 106 approval criteria. At the time of the April 11, 2020 determination, the above cited the July 1, 2019, version of the BEM 106 was in effect, which contains two additional criteria: there is an available waiver slot for the individual's placement; and a person-centered plan of service has been developed. The Initial Asset Assessment Confirmation of MI Choice Waiver Approval does not establish that these portions of the BEM 106 approval criteria have been met. Rather, it states "This notification serves only to inform the [Department] Local office that the applicant has been approved for the MI Choice Waiver. The waiver agency will follow established procedures to notify the [Department] Local Office of the applicant's MI Choice enrollment date." This indicates that at the time of the December 13, 2019, assessment, Petitioner was found eligible but there may not have been an open slot to allow for enrollment into the MI Choice Waiver as of that date. It is also not clear whether a person-centered plan of service had been developed as of that date.

It was uncontested that the MI Choice Waiver Agency entered Petitioner's Special Medicaid Approval eligibility begin date as April 9, 2020. The Department utilized this as the baseline date in determining the divestment penalty period of April 1, 2020 through November 20, 2020. It is unclear why the MI Choice Waiver Agency has not corrected this date if it is inaccurate. Further, there was not sufficient evidence presented to establish that all four of the BEM 106 approved for the waiver criteria were met based on the available information.

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 Petitioner's eligibility for Medical Assistance based on the available information.

**DECISION AND ORDER**

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



CL/ml

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Colleen Lack  
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**

Joleen Peck  
Grand Traverse County DHHS – via  
electronic mail

BSC1 – via electronic mail

D. Smith – via electronic mail

EQAD – via electronic mail

**Counsel for Petitioner**

[REDACTED]  
[REDACTED] MI [REDACTED]

**Petitioner**

[REDACTED]  
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