



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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Date Mailed: May 7, 2021  
MOAHR Docket No.: 20-008736  
Agency No.: ██████████  
Petitioner: ██████████

**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 February 25, 2021. The Petitioner was represented by David Dobreff, Attorney. ██████████ Wife, ██████████ Daughter, and ██████████ Son in Law, appeared as witnesses for Petitioner. The Department of Health and Human Services (Department) was represented by Dan Beaton, Assistant Attorney General. Amy Schantz, Eligibility Specialist (ES), and Amy Assante, Supervisor, appeared as witnesses for the Department.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit 1, pp. 1-82; the Department's Hearing Summary Addendum packet was admitted as Exhibit 2, pp. A1-A55; and Petitioner's documents were admitted as marked Exhibits A-J.

**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 June 6, 2019, Petitioner and his wife received a check from his Son in Law for \$██████████. "Gift – Thank You" was written in the memo portion of the check. (Exhibit D)

2. On July 1, 2019, Petitioner and his wife sold a property on [REDACTED] to their Daughter and Son in Law on a Land Contract. The purchase price was \$90,000.00, of which no portion had been paid. The sellers agreed to pay the real estate transfer tax based on the purchase price of \$90,000.00 when the land contract is paid in full. (Exhibit C)
3. A September 14, 2020, result from the [REDACTED] County Search App shows the prior year State Equalized Value (SEV) of the [REDACTED] property was \$80,400.00. (Exhibit 1, p. 41)
4. On or about [REDACTED] 2020, an Application for Health Coverage & Help Paying Costs, was filed on Petitioner's behalf. (Exhibit 1, pp. 5-19)
5. On or about October 16, 2020, an Assets Declaration Patient and Spouse was filed on Petitioner's behalf. (Exhibit 1, pp. 20-21)
6. On October 28, 2020, a MI Choice Waiver Enrollment/Disenrollment Notice was filed on Petitioner's behalf for a new assessment with a date of change request of October 9, 2020. (Exhibit 1, p. 22)
7. On November 30, 2020, a Health Care Coverage Determination Notice was issued to Petitioner stating MA was approved for November 1, 2020 but indicating there would be a divestment penalty from October 1, 2020 through June 6, 2021, based on assets or income being transferred for less than their fair market value. Specifically, it was noted that the home on [REDACTED] was sold for \$70,800 below fair market value and was a divestment. (Exhibit A)
8. On or about December 21, 2020, a hearing request was filed on Petitioner's behalf contesting the Department's determination. Additional documentation regarding the sale of the [REDACTED] property was included. (Exhibit B)

### **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.

BEM 405 addresses MA Divestment. In part, this policy states:

Divestment results in a penalty period in MA, **not** ineligibility.

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Divestment means a transfer of a resource (see *resource defined* in this item and in glossary) by a client or his spouse that are all of the following:

- Is within a specified time; see *look back period* in this item.
- Is a transfer for *less than fair market value*; see definition in glossary.
- Is not listed in this item under *transfers* that are not divestment.

**Note:** See *annuity not actuarially sound* and *joint owners and transfers* in this item and BEM 401 about special transactions considered transfers for less than *fair market value*.

BEM 405, July 1, 2020, p. 1.

On November 30, 2020, a Health Care Coverage Determination Notice was issued to Petitioner stating MA was approved for November 1, 2020 but indicating there would be a divestment penalty from October 1, 2020 through June 6, 2021, based on assets or income being transferred for less than their fair market value. Specifically, it was noted that the home on [REDACTED] was sold for \$70,800 below fair market value and was a divestment. (Exhibit A)

Petitioner contests the November 30, 2020 determination. Petitioner asserts that there should be no divestment penalty because the June/July 2019 Land Contract was a fair market value transaction and was not a transaction done with the intent of applying for MA benefits.

### Fair Market Value

Regarding less than fair market value and verification sources, the BEM 405 policy states:

Less than fair market value means the compensation received in return for a resource was worth less than the fair market value of the resource. That is, the amount received for the resource was less than what would have been received if the resource was offered in the open market and in an arm's length transaction (see glossary).

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Sources to verify transfers and the reasons for them include, but are not limited to, the following:

- Legal documents.
- Payment or tax records.

- Bills of sale.
- Court or attorney records.
- Correspondence regarding the transaction.
- Bankbooks or statements.

BEM 405, July 1, 2020, pp. 6 and 18.

The Bridges Program Glossary (BPG) defines arm length transaction as:

A transaction between two parties who are not related and who are presumed to have roughly equal bargaining power. It consists of all the following three elements:

- It is voluntary.
- Each party is acting in their own self-interest.
- It is on an open market.

By definition, a transaction between two relatives is not an arm length transaction.

Petitioner asserts that the home on [REDACTED] was sold for \$150,000.00 comprised of the \$60,000.00 check and the land contract for \$90,000.00. (Petitioner's Brief in Support; Exhibits C and D) Testimony and affidavits from Petitioner's wife, daughter, and son in law state that the sale price was \$150,000.00. (Exhibits H and I, Testimony of Petitioner's wife, daughter, and son in law) The land contract was amended to reflect this on December 18, 2020. (Exhibit G)

However, the documentation from June and July 2019 does not support that the purchase price of the home was \$150,000.00. It was specifically noted on the \$[REDACTED] check that this was a gift. (Exhibit D) The original land contract was also clear that the purchase price of the property was \$90,000.00 in both the Price and Terms section as well as the Additional Provisions section addressing the purchase price the real estate transaction tax would be based on. (Exhibit C) Accordingly, based on the information the Department had at the time of the November 30, 2020 determination, the Department understood that the purchase price of the property on [REDACTED] was \$90,000.00.

Petitioner asserts that the Department should have requested verification to obtain further information regarding this transaction before the November 30, 2020 determination was made. BAM 130 directs the Department to obtain verification when required by policy as well as when "information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory." BEM 130, April 1, 2017, p. 1. However, at the time of the November 30, 2020 determination, there was no unclear, inconsistent, or conflicting information that would have indicated further information was needed regarding this transaction. As noted above, the original land contract was clear that the purchase price of the property was \$90,000.00 in both the Price and Terms section as

well as the Additional Provisions section addressing the purchase price the real estate transaction tax would be based on. (Exhibit C) The September 14, 2020, result from the ██████████ County Search App had also been provided, which showed the prior year State Equalized Value (SEV) of the ██████████ property was \$80,400.00. (Exhibit 1, p. 41) These were acceptable verifications sources that had been provided by Petitioner's attorney on or about October 16, 2020. (Exhibit 1, p. 3; ES Testimony) The SEV multiplied by two is an acceptable way to determine the fair market value of real property. BEM 400, April 1, 2018, p. 32. Accordingly, it cannot be found that the Department should have requested additional information regarding this transaction before the November 30, 2020 determination was made.

Further, the affidavits and recently amended land contract are not found to be convincing evidence that the intended actual purchase price of the property was \$150,000.00. As noted above, the \$██████████ check specified that it was a gift and the land contract clearly stated the purchase price of the property was \$90,000.00, of which no portion of that had been paid.

Based on the verifications submitted on Petitioner's behalf for the processing of this application, the fair market value of the property on ██████████ was twice the SEV, \$160,800.00. The Affidavits from Petitioner's wife, daughter, and son in law acknowledge that the property had a fair market value of \$160,800.00 based on twice the SEV. (Exhibits H and I) As the original land contract was clear that the purchase price of the property was \$90,000.00, the Department properly determined that the property was sold for less than fair market value.

### Transfers for Another Purpose

The BEM 405 policy regarding transfers for another purpose states:

#### **Transfers for Another Purpose**

As explained in this item, transfers exclusively for a purpose other than to qualify or remain eligible for MA are not divestment.

A transfer of resources to a religious order by a member of that order in accordance with a vow of poverty are transfers for another purpose.

Assume transfers for less than fair market value was for eligibility purposes until the client or spouse provides convincing evidence that they had no reason to believe LTC or waiver services might be needed.

**Example:** Mr. Smith, age 40, was in good health when he gave his vacation cottage to his nephew. The next day Mr. Smith was in an automobile accident. His injuries require long-term care. The transfer was not divestment because Mr. Smith could not anticipate his need for LTC services.

**Exception:**

- Preservation of an estate for heirs or to avoid probate court is not acceptable as another purpose.
- That the asset or income is not counted for Medicaid does not make its transfer for another purpose.

BEM 405, July 1, 2020, p. 11.

This policy directs the Department to assume transfers for less than fair market value were for eligibility purposes until the client or spouse provides convincing evidence that they had no reason to believe long term care (LTC) or waiver services might be needed. As noted above, the Department had no reason to believe additional information was needed regarding this transaction prior to making the eligibility determination. Further, unlike the example in the BEM 405 policy, Petitioner had reason to anticipate his need for LTC. With a [REDACTED] 1944 date of birth, Petitioner was [REDACTED] years old at the time of the transaction. (Exhibit 1, p. 7) Petitioner had been hospitalized for a small stroke in [REDACTED] [REDACTED] 2018 that resulted in a one-week stay in a rehabilitation facility. In [REDACTED] 2019, Petitioner was hospitalized for about a week for an episode that was treated as a second stroke. (Exhibit 2, p. 44; Wife Testimony) Accordingly, the sale of the property occurred around the time Petitioner was hospitalized for the episode that was treated as a second stroke. Therefore, it cannot be found that the Petitioner had no reason to believe LTC might be needed.

Amount of Divestment

BEM 405 specifies that the divestment penalty period is computed based on the total uncompensated value of all resources divested. BEM 405, July 1, 2020, p. 12. The uncompensated value of a divested resource is: the resource's cash or equity value; minus any compensation received; and the uncompensated value of a promissory note, loan, or mortgage is the outstanding balance due on the date of application. BEM 405, July 1, 2020. p. 15.


Petitioner asserts that the amount of the divestment should be the difference of \$160,800.00 and \$150,000.00. The verifications submitted on Petitioner's behalf for the processing of this application showed the fair market value of the property on [REDACTED] [REDACTED] was twice the SEV, \$160,800.00. However, as noted above, and the original land contract was clear that the purchase price of the property was \$90,000.00. Therefore, the Department properly based the divestment penalty period on an uncompensated value of \$70,800.00 (the fair market value of \$160,800.00 minus the \$90,000.00 purchase price). (Exhibit 1, p. 3)

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 MA.

**DECISION AND ORDER**

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

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Colleen Lack  
Administrative Law Judge  
for Elizabeth Hertel, 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**

Amy Assante  
Charlevoix County DHHS – via electronic mail

**Counsel for Respondent**

H. Daniel Beaton, Jr. – via electronic mail

BSC1 – via electronic mail

C. George – via electronic mail

EQAD – via electronic mail

**Counsel for Petitioner**

David Dobreff – via first class mail  
103 W Belvedere Ave  
Charlevoix, MI 49720

**Petitioner**

██████████ – via first class mail

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██████████ MI ██████████