



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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[REDACTED] MI [REDACTED]

Date Mailed: April 16, 2021
MOAHR Docket No.: 20-008832
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 March 18, 2021, from Lansing, Michigan. The Petitioner was represented by her attorney Scott Brogan. The Department of Health and Human Services (Department) was represented by Assistant Attorney General Daniel Beaton. Chrissie Johnston AP Supervisor, Michelle Mayo, Eligibility Specialist and Lorraine Massey AP Supervisor also appeared for the Department. Department Exhibit 1, pp. 1-62 was received and admitted.

ISSUE

Did the Department properly recalculate the divestment penalty period for Petitioner?

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 January 20, 2020, divested funds totaling [REDACTED] were returned to the [REDACTED] Trust. (Ex.1, p.60)
2. Petitioner was not a trustee or trustor of the [REDACTED] Trust at the time the divested funds were returned. (Ex. 1, pp. 23-34)
3. Petitioner did not reacquire the same percentage of ownership interest in the resources that were originally transferred.
4. On October 23, 2020, the undersigned Administrative Law Judge issued a Decision and Order instructing the Department to recalculate the divestment

penalty period for Petitioner going back to the date Petitioner reported the return of divested assets.

5. On December 16, 2020, an email was sent to Petitioner's attorney from Chrissie Johnston that reads as follows: "Upon the hearing decision, we sought out DHHS policy in our next steps. It was decided that because the return of all the monies was not given to the institutionalized spouse, the penalty period is unable to be shortened." (Ex. 1, p.20)
6. On December 17, 2020, Petitioner requested hearing disputing the recalculation 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.

Resources Returned

Cancel a divestment penalty if either of the following occurs before the penalty is in effect:

- All the transferred resources are returned and retained by the individual.
- Fair market value is paid for the resources.

Recalculate the penalty period if either of the following occurs while the penalty is in effect:

- All the transferred resources are returned.
- Full compensation is paid for the resources.

Use the same per diem rate originally used to calculate the penalty period.

Once a divestment penalty is in effect, return of, or payment for, resources cannot eliminate any portion of the penalty period already past. However, recalculate the penalty period. The divestment penalty ends on the later of the following:

- The end date of the new penalty period.
- The date the client notified you that the resources were returned or paid for. BEM 405

In this case, the assets that Petitioner divested were returned to the Vandeneeden Trust on January 20, 2020. On January 20, 2020, Petitioner was not a trustee or trustor of the

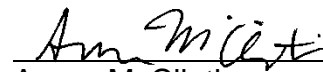
Vandeneeden trust. The resources were not returned or retained to the Petitioner therefore the criteria in BEM 405 for Resources Returned were not met. Therefore, the Department's position that the divestment penalty period could not be recalculated was proper and correct and consistent with Department policy. BEM 405

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 recalculated Petitioner's divestment penalty period.

DECISION AND ORDER

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

AM/nr



Aaron McClintic
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

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Petitioner

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