



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: May 14, 2021
MOAHR Docket No.: 21-000562
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 hearing¹ was held on March 10, 2021. The Petitioner was represented by Andrew Luoma, Attorney. [REDACTED] Daughter and Power of Attorney, appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by H. Daniel Beaton Jr., Assistant Attorney General. Chrissie Johnston, Assistance Payments Supervisor, Michele Mayo, Eligibility Specialist, and Lorraine Massie, Assistance Payments Supervisor, appeared as witnesses for the Department.

During the hearing proceeding, the hearing summary packet for Petitioner's spouse's case was admitted as Exhibit A, pp. 1-69; the hearing summary packet for Petitioner's case was admitted as Exhibit B, pp. 1-38; and the attachments to Petitioner's spouse's hearing request was admitted as Exhibit 1, pp. 1-10.

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 The telephone hearing was held in conjunction with the hearing for Petitioner's spouse, [REDACTED] MOAHR Docket No. 21-000561.

1. On [REDACTED] 2020, an application for long term care (LTC) MA was submitted for Petitioner with attachments. (Exhibit B, pp. 16-23)
2. On [REDACTED] 2020, an application for long term care (LTC) MA was submitted for Petitioner's spouse with attachments. (Exhibit A, pp. 24-30 and 35-39)
3. Petitioner's spouse is also a LTC resident. (Exhibit B, pp. 3 and 16)
4. Cash was gifted to Petitioner's daughter in the amount of [REDACTED]. (Exhibit B, pp. 3, 21, and 23)
5. On January 19, 2021 Petitioner's spouse's application for MA was denied based on assets in excess of the \$2,000.00 limit for a group size of one. It was noted that the life insurance policy for Petitioner has a cash surrender value that exceeds the applicable asset limit. (Exhibit A, pp. 66-69)
6. The divestment penalty from the gift to Petitioner's daughter could only be applied to Petitioner because Petitioner's spouse was not eligible for MA. (Exhibit B, p. 3; ES Testimony)
7. On January 25, 2021, a Health Care Coverage Determination Notice was issued stating Petitioner was approved for MA with a monthly patient pay amount. Further, a divestment penalty would be applied to Petitioner's MA case from December 1, 2020 through April 22, 2022 because of assets or income transferred for less than their fair market value. (Exhibit B, pp. 35-38)
8. On February 1, 2021, a hearing request was filed on Petitioner's behalf contesting the Department's determination. (Exhibit B, pp. 5-7)

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.

Divestment results in a penalty period in MA, not ineligibility. Divestment means a transfer of a resource by a client or his spouse that are all of the following: within a

specified time; for less than fair market value; and not listed in policy under transfers that are not divestment. BEM 405, January 1, 2021, p. 1.

To be in a penalty situation, the client must be eligible for MA. BEM 405, p. 6.

In this case, Petitioner contests the divestment penalty not being shared between Petitioner and her spouse. The parties agreed that if Petitioner's spouse was eligible for MA, then the divestment penalty would be shared.

However, the Hearing Decision in the companion case affirmed the Department's January 19, 2021 determination to deny MA for Petitioner's spouse. Therefore, the Department properly applied the divestment penalty to only Petitioner.

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**.

CL/ml



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

Chrissie Johnston
Iron County DHHS – via electronic mail

BSC1 – via electronic mail

C. George – via electronic mail

EQAD – via electronic mail

Counsel for Respondent

H. Daniel Beaton, Jr. – via electronic mail

Counsel for Petitioner

Andrew M. Luoma – via first class mail
PO Box 8
706 Crystal Ave
Crystal Falls, MI 49920

Petitioner

██████████ – via first class mail
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██████████, MI ██████████