



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: August 6, 2021
MOAHR Docket No.: 21-002362
Agency No.: ██████████
Petitioner: ██████ ██████

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on July 8, 2021. Petitioner was represented by her attorney Sharon A. Burgess. The Department was represented by LeAnn D. Scott, Assistance Attorney General, and Neil A. Giovanatti, Assistance Attorney General. Renee Martinez testified on behalf of the Department.

ISSUE

Did the Department of Health and Human Services (Department) act in accordance with policy when it determined that Petitioner's long term Medical Assistance (MA) benefits would be subject to a divestment penalty from June 1, 2021, through July 31, 2021?

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 ██████ ██████ 2021, the Department received Petitioner's application for Medical Assistance (MA) and including a request for long term care benefits. Petitioner was not an ongoing recipient of Medical Assistance (MA) benefits. Exhibit A, pp 16-22.
2. On April 19, 2021, the Department determined that Petitioner was eligible for Medical Assistance (MA) benefits effective April 1, 2021, with a \$5,000 monthly patient pay amount. Exhibit A, pp 23-26.
3. The Department determined that Petitioner had divested assets with a value of \$19,120, and her long-term care was subject to a two-month divestment penalty. Exhibit A, pp 29-36.

4. On May 6, 2021, the Department notified Petitioner that he long term care would be subject to a two-month divestment penalty from June 1, 2021, through July 31, 2021. Exhibit A, pp 40-43.
5. On May 10, 2021, the Department received Petitioner's request for a hearing protesting the Department's determination that a divestment penalty would start on June 1, 2021. Exhibit A, pp 3-15.

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 through 42 USC 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 through 42 CFR 420.25. The Department administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.103 through MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

Divestment is a type of transfer of a resource and not an amount of resources transferred. Resource means all the client's assets and income. Transferring a resource means giving up all or partial ownership in the resource. Divestment results in a penalty period, not MA program ineligibility. Department of Health and Human Services Bridges Eligibility Manual (BEM) 405 (April 1, 2021), pp 1-2. During the penalty period, MA will not pay the client's cost for: LTC services; home and community-based services; home help; or home health. MA will pay for other MA-covered services. BEM 405, p. 1. A divestment is a transfer of a resource by a client that is (i) within a specified time (the look-back period), (ii) for less than fair market value (FMV), and (iii) not an excluded transfer. BEM 405, p. 1.

Petitioner filed an application for MA on [REDACTED] 2021, and requested long term care benefits following her admission to a nursing facility. The hearing record supports a finding that Petitioner supplied the Department with sufficient information to determine her eligibility for MA benefits. On April 19, 2021, the Department determined that Petitioner is eligible for MA benefits effective April 1, 2021.

Some time after that, Petitioner's attorney contacted Petitioner's case worker inquiring about start of an expected divestment penalty. On May 6, 2021, the Department notified Petitioner that long term benefits would be subject to a divestment penalty from June 1, 2021, through July 31, 2021. The Department relied on its policies, which instruct the Department to pend a negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means

that the action taken by the department is effective at least 12 calendar days following the date of the department's action. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (August 1, 2021), p 13. Further, BEM 405 directs the Department to give clients timely notice to long term care and waiver recipients before actually applying the divestment penalty, but only adequate notice to new applicants. BEM 405, p 15.

No evidence was presented on the record that Petitioner was an ongoing recipient of long-term care MA benefits, or that she was a waiver recipient. As of April 1, 2021, Petitioner was a new applicant for MA benefits. Further, no evidence was presented on the record that the delay in the application of the divestment penalty was caused by Petitioner's failure to provide timely verification of her financial circumstances, or that the transfer of an asset was not discovered at the time of application.

Therefore, the Department failed to establish any authority for requiring "timely notice" of the divestment penalty start date. Only "adequate notice" was required by BEM 405 under these circumstances. "Adequate notice" is written notice sent to the client at the same time an action takes effect (not pended). BAM 220, p 3.

Medicaid eligibility is determined on a calendar month basis. Department of Health and Human Services Bridges Eligibility Manual (BEM) 105 (January 1, 2021), p 2. Petitioner filed her application for MA benefits on April 1, 2021, and the Department determined that she was eligible for MA benefits on April 19, 2021. Petitioner is eligible for MA benefits effective as of the application date, and her eligibility for long term care should be effective that date as well so long as she meets all of the eligibility criteria. Since only "adequate note" is required for the Department to establish the start date of divestment penalty associated with a new application, the start of the properly determined divestment penalty should be April 1, 2021.

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 did not act in accordance with Department policy when it determined that Petitioner is subject to a two-month divestment penalty effective June 1, 2021.

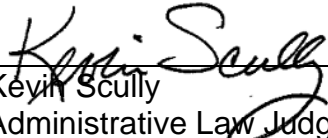
DECISION AND ORDER

Accordingly, the Department's decision is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

Correct the divestment penalty period for Petitioner's Medical Assistance (MA) benefits and apply it from April 1, 2021, to May 30, 2021, and request a help desk ticket as necessary to correct Petitioner's eligibility for long term care benefits.

KS/nr



Kevin Scully
Administrative Law Judge
Michigan Office of Administrative Hearings
and Rules (MOAHR)

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

Elisa Daly
411 East Genesee
PO Box 5070
Saginaw, MI 48607

Saginaw County DHHS- via electronic
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