



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 25, 2021
MOAHR Docket No.: 21-002801
Agency No.: ██████████
Petitioner: ██████ ██████

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 MSTeams hearing was held on July 27, 2021, from Lansing, Michigan. The Petitioner was represented by her Attorney, Sam Hurwitz, P# 33243. The Department of Health and Human Services (Department) was represented by Assistant Attorney General, Lindsey LaVine, P# 75944 and Tiffany Tarrens, Assistant Payments Worker.

ISSUE

Did the Department properly determine the divestment penalty for the Petitioner's Long-Term Care (LTC) Medicaid (MA) case?

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 March 27, 2021, the Petitioner gifted her daughter \$ ██████████ Department Exhibit 1, pgs. 15-19, and 21.
2. The Department registered the Petitioner's application for MA LTC on ██████ 2021, but it was actually delivered on ██████ ██████ 2021, as verified by the Petitioner's attorney. Department Exhibit 1, pgs. 9-13.
3. The Department Caseworker added March 2021, as a retro month instead of re-registering the application for March 30, 2021.
4. On May 4, 2021, the Department Caseworker sent the Petitioner a Health Care Coverage Determination Notice, DHS 1605, that stated that she was approved for

MA LTC retroactive to March 2021 with a divestment penalty of April 1, 2021, through September 5, 2023. Department Exhibit 1, pgs. 13-14.

5. On May 25, 2021, the Department received a hearing request from the Petitioner, contesting the Department's negative action.

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.

In this case, the Petitioner gifted her daughter \$ [REDACTED] on March 27, 2021. Department Exhibit 1, pgs. 15-19, and 21. The Department registered the Petitioner's application for MA LTC on April 7, 2021, but it was actually delivered on March 30, 2021, as verified by the Petitioner's attorney. Department Exhibit 1, pgs. 9-13. The Department Caseworker added March 2021, as a retro month instead of re-registering the application for [REDACTED] [REDACTED] 2021.

On May 4, 2021, the Department Caseworker sent the Petitioner a Health Care Coverage Determination Notice, DHS 1605, that stated that she was approved for MA LTC retroactive to March 2021 with a divestment penalty of April 1, 2021, through September 5, 2023. Department Exhibit 1, pgs. 13-14. On May 25, 2021, the Department received a hearing request from the Petitioner, contesting the Department's negative action. BEM 405.

During the hearing, the Department stated, and the hearing summary reflected, that the divestment period should have started in March 2021 instead of April 2021. The Petitioner's Attorney agreed to the March 2021 divestment period start date. However, the Assistant Attorney General argued that since MA was approved for March 2021 that it could not be removed without timely notice. The Petitioner's Attorney was willing to waive notice so there was no due process issue according to him.

This is Administrative Law Judge finds that the Petitioner should not have to pay for the Department's error in not re-registering the application for March 2021 instead of issuing retro month for MA of March 2021. If the case was properly registered for the correct application date, then BRIDGES would have calculated the correct divestment penalty

month, which would have started in March 2021 not April 2021. The Department Caseworker attempted to correct the error, but the system would not let her.

DECISION AND ORDER

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 the divestment penalty sanction should start April 2021 instead of March 2021 when the application was received on [REDACTED] [REDACTED] 2021.

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 of initiating a redetermination of the Petitioner's eligibility for MA LTC retroactive to her application dated [REDACTED] [REDACTED] 2021, by sending a BRIDGES fix it ticket for the divestment penalty sanction to start on March 2021 based on this decision.

Based on policy, the Department should provide the Petitioner with written notification of the Department's revised eligibility determination and issue the Petitioner any retroactive benefits she/he may be eligible to receive, if any.

Carmen G. Fahie

CF/nr

Carmen G. Fahie
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

Counsel for Respondent

Lindsey Lavine- via first class mail
P.O. Box 30758
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Wayne 82 County DHHS- via electronic mail

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DHHS

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Petitioner

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