



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: September 8, 2021  
MOAHR Docket No.: 21-003079  
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 hearing was held on July 29, 2021, from Lansing, Michigan. The Petitioner was represented by [REDACTED] Daughter and Power of Attorney (POA). The Department of Health and Human Services (Department) was represented by Jennifer Eastman, Community Resources Coordinator (CRC).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-21; and Petitioner's document packet was admitted as Exhibit 1, pp. 1-87.

### **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 April 16, 2014, property located at [REDACTED] MI was transferred from Petitioner to [REDACTED] for [REDACTED] but was not recorded at the Register of Deeds until April 24, 2019. (Exhibit A, pp. 1 and 14)
2. At the time of the April 16, 2014 transfer, the property had a State Equalized Value (SEV) of [REDACTED] (Exhibit A, p. 1; CRC Testimony)

3. On November 11, 2019, the property at located at [REDACTED] MI was sold by [REDACTED] for [REDACTED] (Exhibit A, p. 17)
4. On January 4, 2020, a Long-Term Care Medicaid Redetermination Notice was issued to Petitioner with a due date of February 3, 2020. (Exhibit A, p. 5)
5. On January 30, 2020, an Assets Declaration Patient and Spouse was submitted on Petitioner's behalf for the Redetermination. (Exhibit A, pp. 6-11)
6. On February 5, 2020, a Verification Checklist was issued with a due date of February 18, 2020 requesting: the homestead deed; 2019 homestead taxes; purpose of a January 29, 2020 [REDACTED] withdrawal and proof of where the money was spent. (Exhibit A, pp. 12-13)
7. In processing the redetermination, the Department discovered the transfer of the property located at [REDACTED] MI to [REDACTED]. (Exhibit A, pp. 1 and 14)
8. On February 19, 2020, a Verification Checklist was issued with a due date of March 2, 2020 requesting: property deeds beginning with the original purchase, transfer to [REDACTED] and and/all additional deeds/transfers; home sale documents; and proof of where the proceeds were spent. (Exhibit A, pp. 15-16)
9. On February 19, 2020, verifications were submitted. (Exhibit A, pp. 17-18)
10. On February 25, 2020, a Health Care Coverage Determination Notice was issued to Petitioner stating MA was approved for March 1, 2020 and ongoing, but indicating there would be a divestment penalty from April 1, 2020 to October 7, 2020, based on assets or income being transferred for less than their fair market value. Specifically, it was noted that the homestead was gifted on April 16, 2014, therefore a divestment of [REDACTED] occurred. (Exhibit A, pp. 19-21)
11. On June 11, 2021, a hearing request was filed on Petitioner's behalf contesting the Department's determination. Additional documentation was included. (Exhibit A, pp. 3-4)

### **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.

BEM 405, January 1, 2020, p. 1.

## **RESOURCE DEFINED**

**Resource means all the client's and spouse's assets and income.** It includes all assets and all income, even countable and/or excluded assets, the individual or spouse receive. It also includes all assets and income that the individual (or spouse) were entitled to but did not receive because of action by one of the following:

- The client or spouse.
- A person (including a court or administrative body) with legal authority to act in place of or on behalf of the client or the client's spouse.
- Any person (including a court or administrative body) acting at the direction or upon the request of the client or his/her spouse.

## **TRANSFER OF A RESOURCE**

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. Not all transfers are divestment. Examples of transfers include:

- Selling an asset for fair market value (not divestment).
- Giving an asset away (divestment).
- Refusing an inheritance (divestment).

- Payments from a MEDICAID TRUST that are not to, or for the benefit of, the person or his spouse; see BEM 401 (divestment).
- Putting assets or income in a trust; see BEM 401.
- Giving up the right to receive income such as having pension payments made to someone else (divestment).
- Giving away a lump sum or accumulated benefit (divestment).
- Buying an annuity that is not actuarially sound (divestment).
- Giving away a vehicle (divestment).
- Putting assets or income into a Limited Liability Company (LLC)
- Purchasing an asset which decreases the group's net worth and is not in the group's financial interest (divestment)

BEM 405, January 1, 2020, pp. 1-2.  
(Underline added by ALJ)

### **Transfers by Representatives**

Treat transfers by any of the following as transfers by the client or spouse.

- Parent for minor.
- Legal guardian.
- Conservator.
- Court or administrative body.
- Anyone acting in place of, on behalf of, at the request of or at the direction of the client or the client's spouse.

BEM 405, January 1, 2020, p. 3.

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, January 1, 2020, pp. 6 and 18

### **Real Property and Mobile Home Value**

#### **FIP, SDA, RCA, SSI-Related MA Only, CDC and FAP**

To determine the fair market value of real property and mobile homes use:

- Deed, mortgage, purchase agreement or contract.
- State Equalized Value (SEV) on current property tax records multiplied by two.
- Statement of real estate agent or financial institution.
- Attorney or court records.
- County records

BEM 400, April 1, 2018, p. 32

### **Uncompensated Value**

The uncompensated value of a divested resource is

- The resource's cash or equity value.
- Minus any compensation received.
- The uncompensated value of a promissory note, loan, or mortgage is the outstanding balance due on the date of application.

BEM 405, January 1, 2020, p. 15.

The Department is to compute the penalty period on the total uncompensated value of all resources divested. BEM 405, January 1, 2020, p. 12.

On April 16, 2014, property located at [REDACTED] MI was transferred from Petitioner to [REDACTED] for [REDACTED] but was not recorded at the Register of Deeds until April 24, 2019. (Exhibit A, pp. 1 and 14) At the time of the April 16, 2014 transfer, the property had a State Equalized Value (SEV) of [REDACTED]. (Exhibit A, p. 1; CRC Testimony)

On January 4, 2020, a Long-Term Care Medicaid Redetermination Notice was issued to Petitioner with a due date of February 3, 2020. (Exhibit A, p. 4) On January 30, 2020, an Assets Declaration Patient and Spouse was submitted on Petitioner's behalf for the Redetermination. (Exhibit A, pp. 5-11) On February 5, 2020, a Verification Checklist was issued with a due date of February 18, 2020 requesting: the homestead deed; 2019 homestead taxes; purpose of a January 29, 2020 [REDACTED] withdrawal and proof of where the money was spent. (Exhibit A, pp. 12-13)

In processing the 2020 redetermination for Petitioner's MA case, the Department discovered the transfer of the property located at [REDACTED] MI. The transfer was within the 60 month look back period. Petitioner did not receive anything in exchange for the property. Therefore, the Department determined that the transfer was a divestment. The Department utilized two times the SEV at the time of the transfer to determine the fair market value [REDACTED] (Exhibit A, pp. 1, 14, and 19-21; CDC Testimony)

The Department's determination was in accordance with the above cited BEM 400 and BEM 405 policies. Giving an asset away is considered a divestment. Two times the SEV is an acceptable way to determine the fair market value of an asset. Petitioner did not receive any compensation in exchange for the property. Therefore, the uncompensated value remained two times the SEV.

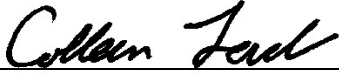
Petitioner's POA asserted that no financial assets were gained with the sale of the property. (Exhibit A, p. 4; Exhibit 1; POA Testimony) This Administrative Law Judge sympathizes with Petitioner's situation. However, the November 11, 2019 sale of the home by [REDACTED], the owner of the property at that time, was not the divestment. Rather, the April 16, 2014 transfer of the property from Petitioner to [REDACTED] for no consideration was the divestment. Therefore, the Department properly considered the value at the time of the April 16, 2014 transfer as the uncompensated value of this asset.

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

  
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**Colleen Lack**  
Administrative Law Judge

**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

**Via Electronic Mail**

MDHHS-Barry-Hearings  
BSC3  
C. George  
EQAD  
MOAHR

**Petitioner – Via First Class Mail**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

**Authorized Hearing Rep. – Via First Class Mail**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]