



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: February 24, 2022
MOAHR Docket No.: 21-003571
Agency No.: ██████████
Petitioner: ██████████ ██████████

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 zoom videoconference hearing was held on January 25, 2022, from Lansing, Michigan. The Petitioner was represented by Attorney ██████████ ██████████ ██████████ ██████████ appeared and testified for the Petitioner. The Department of Health and Human Services (Department) was represented by Assistant Attorney General Dan Beaton. Denise Laessig, Eligibility Specialist appeared and testified for the Department. Department Exhibit 1, pp. 1- 317 was received and admitted. Petitioner Exhibit A-E were received and admitted.

ISSUE

Did the Department properly determine that Petitioner divested assets and should be subjected to a divestment penalty period?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was admitted to the ██████████ Medical Care Facility on January 15, 2021.
2. On ██████████ ██████████ ██████████ Petitioner applied for MA-LTC.
3. On June 9, 2021, a Health Care Coverage Determination Notice was issued informing Petitioner she was eligible for MA-LTC with a divestment penalty period from March 1, 2021, through January 26, 2022. Divestment in the amount of \$██████████ (Exhibit 1, pp. 10-13)
4. On ██████████ ██████████ ██████████ Petitioner requested hearing stating “The transfers made in this case were to a disabled child and therefore are not divestment.”

5. [REDACTED] [REDACTED] is Petitioner's adult daughter.
6. Petitioner transferred \$ [REDACTED] to her daughter [REDACTED] [REDACTED] during the five year look back period.
7. Based on a 2016 application for social security benefits, Petitioner's daughter [REDACTED] [REDACTED] was found to be disabled by the Social Security Administration as of February 14, 2017. (Ex. 1, pp. 29-31)
8. The determination from DDS states "Medical Improvement Not Expected" with a diary date of August 1, 2024. (Ex. 1, p.30)
9. Petitioner was not awarded SSI benefits because she was over the asset limit.
10. Petitioner suffers from lupus and is unable to work full time.

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.

Medicaid (MA) ONLY

Divestment results in a penalty period in MA, **not** ineligibility. Divestment policy does **not** apply to Qualified Disabled Working Individuals (QDWI); see Bridges Eligibility Manual (BEM) 169.

Divestment is a type of transfer of a resource and not an amount of resources transferred.

Divestment means the transfer of a resource (see *resource defined* in this item and in glossary) by a client or his spouse that are all 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 under *transfers that are not divestment* in this item.

See *annuity not actuarially sound* and *joint owners and transfers* in this item and BEM 401 about special transactions considered transfers for less than *fair market value*.

During the penalty period, MA will **not** pay the client's cost for:

Long Term Care (LTC) services.
Home and community-based waiver services.
Home help.
Home health. BEM 405, p.

Transfers Involving Child

A transfer to the client's blind or disabled (see BEM 260) child, regardless of the child's age or marital status, are not divestment. BEM 405, p.9

Transfers for Another Purpose

A transfer of resources to a religious order by a member of that order in accordance with a vow of poverty are transfers for another purpose.

As explained in this item, transfers exclusively for a purpose other than to qualify or remain eligible for MA are not divestment.

Assume transfers for less than fair market value were for eligibility purposes until the client or spouse provides convincing evidence that they had no reason to believe LTC or waiver services might be needed. BEM 405, p.11

In this case, Petitioner's daughter [REDACTED] [REDACTED] was found to be disabled by the social security administration as of February 14, 2017, based on a 2016 social security benefit application. The determination of disability from DDS states "Medical Improvement Not Expected" with a diary date of August 1, 2024. Petitioner credibly testified that she suffers from lupus and her health condition has not improved since 2017 and she continues to be unable to work. Presumably, if DDS was asked to evaluate if [REDACTED] [REDACTED]

was disabled in 2021, they would have reviewed their determination made in 2017 and found that she was disabled under BEM 260.

Department policy states that transfers to a child who is disabled are not divestment. BEM 405, p.9. Petitioner's daughter [REDACTED] [REDACTED] provided sufficient proof that she is disabled. Therefore, the transfers Petitioner made to her daughter [REDACTED] [REDACTED] totaling \$[REDACTED] are not divestment.

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 divested assets.

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:

1. Lift the finding of divestment and erase the divestment penalty period.
2. Award Petitioner MA-LTC benefits going back to the month of application if she is found otherwise eligible.

AM/nr



Aaron McClintic
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

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