



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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Date Mailed: September 29, 2021  
MOAHR Docket No.: 21-003641  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

**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 September 7, 2021, from Detroit, Michigan. Petitioner was represented by her Authorized Hearing Representative (AHR)/Power of Attorney (POA) Mary Ann Szwabowski and her daughter ██████████. The Department of Health and Human Services (Department) was represented by Danielle Sorrell, Eligibility Specialist and Brandon Watson, Supervisor.

**ISSUE**

Did the Department properly process Petitioner's Medical Assistance (MA) benefits and impose a divestment penalty for the period of July 1, 2021, through October 19, 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 or around ██████████ 2021, an application for MA benefits was submitted to the Department on Petitioner's behalf. A request for retroactive MA benefits for the months of April 2021 and May 2021 was also made. (Exhibit A, pp. 16-32)
2. Petitioner also requested enrollment in the MIChoice Waiver Program. (Exhibit A, pp. 16-32)
3. On or around July 16, 2021, the Department sent Petitioner a Health Care Coverage Determination Notice informing her that from June 1, 2021, ongoing, she was approved for MA benefits with a monthly deductible of \$1,487. The Notice further informed Petitioner that for the time period between April 1, 2021 and May

31, 2021 she was not eligible for MA benefits because the value of her countable assets was higher than allowed. (Exhibit A, pp. 47-51)

4. The Department was notified by the MIChoice Waiver Program agency that as of July 13, 2021, Petitioner was approved for the waiver program and as a result, the Department reran Petitioner's MA eligibility.
5. In reprocessing Petitioner's MA eligibility, the Department discovered that in the five years prior to the application, specifically, on May 24, 2021, a check was issued from Petitioner's Comerica Bank account to Petitioner's daughter [REDACTED] [REDACTED] in the amount of \$35,000. The memo line included a note that the check was for "pay back loan." (Exhibit A, p. 9)
6. Petitioner's daughter asserted that the \$35,000 check issued to her was repayment of a loan, as she had loaned Petitioner \$20,000 on February 2, 2019, and \$15,000 on March 10, 2020. The two checks from Petitioner's daughter's company issued to Petitioner were presented for review. (Exhibit A, pp. 6-7)
7. The Department concluded that because no loan agreement or written contract was made at the time of the transfers from Petitioner's daughter to Petitioner, the \$35,000 payment to Petitioner's daughter made on May 24, 2021 was considered a cash asset transfer for less than fair market value, and thus, divestment.
8. On July 21, 2021, the Department sent Petitioner a Health Care Coverage Determination Notice (Notice) notifying her that from July 1, 2021, ongoing, she was approved for full coverage MA benefits. (Exhibit A, pp. 52-54)
  - a. The July 21, 2021, Notice further advised Petitioner that the Base Line Date was determined to be July 13, 2021 and that a divestment penalty applied which precluded any long-term care (LTC) and home and community-based waiver services from July 1, 2021 to October 19, 2021. (Exhibit A, pp. 52-54)
9. On August 2, 2021, Petitioner, through her representative, requested a hearing disputing the Department's actions, specifically the divestment penalty. (Exhibit A, pp. 4-5)
  - a. Petitioner's AHR confirmed that there was no dispute with respect to the denial of coverage for April 2021 and May 2021 or the information in the July 16, 2021, Health Care Coverage Determination Notice and that the only issue was the imposition of the divestment penalty identified in the July 21, 2021, Notice.
10. On or around August 16, 2021, Petitioner was admitted to a LTC facility.

## 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 the July 21, 2021, Notice, the Department concluded that Petitioner's MA eligibility was subject to a divestment penalty from July 1, 2021, to October 19, 2021, precluding LTC and/or waiver benefits on Petitioner's behalf during that period, as it determined a divestment occurred. (Exhibit A, pp. 52-54).

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. Cash in bank accounts is an asset. Thus, giving away cash, is divestment. Divestment results in a penalty period, not MA program ineligibility. BEM 405 (April 2021), pp. 1-2. BEM 400 (July 2021), pp.1-5,16. 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.

At issue in this case is a check issued to Petitioner's daughter [REDACTED], on May 24, 2021 in the amount of \$35,000. (Exhibit A, p. 9). The Department determined that this check to Petitioner's daughter was a transfer of Petitioner's cash assets for less than fair market value and resulted in divestment.

To determine if an asset transfer qualifies as divestment, the baseline date must first be established. A person's baseline date is the first date that the client was eligible for MA and one of the following: in LTC; approved for the waiver; eligible for home health services; or eligible for home help services. BEM 405, pp.5-6. A client's baseline date does not change, even if the client leaves LTC. Transfers that occur on or after a client's baseline date must be considered for divestment. In addition, once the baseline date is established, the Department will determine the look-back period, which is 60 months prior to the baseline date. BEM 405, p. 5-6.

In this case, the Department properly determined that the baseline date was July 13, 2021, based on notification from the MIChoice Waiver Program agency that Petitioner was approved for the waiver. Thus, the Department properly determined that the cash asset transfer referenced above was within the timeframe that allows for a divestment penalty, as it occurred within the look-back period, or the timeframe that allows for a divestment penalty. The Department must then consider whether the transfer was made for less than fair market value. Less than fair market value means that the compensation received in return for a resource was worth less than the fair market value of the resource. BEM 405, pp. 6-7.

The Department asserted that because the \$35,000 check from Petitioner's account to Petitioner's daughter is the giving away of cash assets, it is considered divestment. Petitioner's daughter did not dispute that she received a \$35,000 check from Petitioner on or around May 24, 2021. However, Petitioner's AHR asserted that the \$35,000 check was repayment of a loan previously made to Petitioner from her daughter [REDACTED]. During the hearing, Petitioner's daughter [REDACTED] testified and Petitioner's AHR argued that on two occasions (February 2, 2019, and March 10, 2020), [REDACTED] loaned Petitioner \$20,000 and \$15,000, respectively, to temporarily fund Petitioner's Comerica checking account until Petitioner's two investment accounts were closed. Petitioner's AHR argued that [REDACTED] loaned Petitioner the \$35,000 knowing that she would be paid back when Petitioner's investment accounts were fully closed. Petitioner's AHR asserted that the \$35,000 check from Petitioner to [REDACTED] was issued upon liquidation of Petitioner's investment accounts.

In response, the Department argued that because there was no loan agreement/written contract at the time of the February 2, 2019 and March 10, 2020 transfers to Petitioner, the loan was not bona fide, and thus, the payment of \$35,000 to Petitioner's daughter was the transfer of an available cash asset/resource. Department policy at BEM 400, p.43 indicates that:

A loan is bona fide if it meets all the following requirements:

- It is enforceable under state law.
- The loan agreement is in effect at the time of the transaction.
- The borrower acknowledges an obligation to repay.
- The loan document includes a plan for repayment.
- The repayment plan is feasible.

Although Petitioner's AHR asserted that the \$35,000 payments to Petitioner by [REDACTED] were made with the full intention that [REDACTED] would be reimbursed after the closure of Petitioner's investment accounts, the AHR confirmed that there was no loan document executed between Petitioner and [REDACTED] at the time of the transactions. Furthermore, although Petitioner's AHR argues that Petitioner was aware she would be required to repay the \$35,000, no plan for repayment outlined in an enforceable loan document was presented for review. Petitioner's AHR maintained that she was unaware of the policy

requiring a loan document and further asserted that there was no intention to divest any resources.

Department policy provides that transfers exclusively for a purpose other than to qualify for MA are not divestment. However, the Department is to assume that transfers for less than fair market value are for MA eligibility purposes until the client provides convincing evidence that they had no reason to believe that waiver or LTC services might be needed. BEM 405, p. 11. Notwithstanding Petitioner's AHR's argument and considering Petitioner's age, one could reasonably believe that she may require waiver or LTC services.

Upon thorough review, the Department properly determined that the \$35,000 check to Petitioner's daughter was considered divestment. Because the Department established that a divestment occurred, an analysis of the computation of the applicable penalty period follows. The Department determined that Petitioner was subject to a divestment penalty for the period between July 1, 2021, and October 19, 2021. The Department stated that in computing the penalty period, it relied on the \$35,000 cash asset transfer discussed above. Department policy provides that the penalty period is computed based on the total uncompensated value of all resources divested, which in this case, is the cash value. Once the total uncompensated value is determined, the Department is to divide that amount by the average monthly private LTC Cost in Michigan, which is based on the client's baseline date. This gives the number of full months for the penalty period. The fraction remaining is multiplied by 30 to determine the number of days for the penalty period in the remaining partial month. BEM 405, pp.12-15. The Department will apply penalty to the months (or days) an individual is eligible for MA and actually in LTC, Home Health, Home Help, or the MIChoice Waiver.

Applying Department policy to Petitioner's case, based on a \$35,000 total uncompensated value of the divested resources and an \$9,560 average monthly private LTC cost in Michigan applicable to Petitioner's 2021 baseline date, the divestment penalty is three months and 19 days. Therefore, upon review, the Department properly applied a divestment penalty from July 1, 2021, to October 19, 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 acted in accordance with Department policy when it processed Petitioner's MA eligibility and determined that she was subject to a divestment penalty for the period from July 1, 2021, to October 19, 2021.

**DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED**.



ZB/jm

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**Zainab A. Baydoun**  
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 Email:** MDHHS-Wayne-82-Hearings  
BSC4-HearingDecisions  
C. George  
EQADhearings  
MOAHR

**Authorized Hearing Rep. – Via USPS:** Maryann Szwabowski  
424 Boardwalk  
Walled Lake, MI 48390

**Petitioner – Via USPS:** [REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]