



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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██████████, OH ██████████

Date Mailed: October 6, 2021
MOAHR Docket No.: 21-003859
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 telephone hearing was held on September 9, 2021, from Lansing, Michigan. The Petitioner was represented by her daughter and power of attorney ██████████ ██████████. The Department of Health and Human Services (Department) was represented by Nataki Johnson FIP. Ann Miller Long Term Care MA Specialist also appeared and testified for the Department. Department Exhibit 1, pp. 1-394 was received and admitted. Petitioner Exhibit A was also received admitted.

ISSUE

Did the Department properly determine that Petitioner divested assets and impose 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. On ██████████ ██████████ ██████████ Petitioner applied for MA-LTC with a request for retroactive coverage going back to March 2021.
2. On July 1, 2021, a Verification Checklist was sent to Petitioner with a July 11, 2021, due date requesting asset verifications.
3. On July 12, 2021, an extension was granted for the verifications with a July 22, 2021, due date.
4. On August 2, 2021, a notarized letter and other supporting documents were received with explanation for spending.

5. On August 3, 2021, a Health Care Coverage Determination Notice was issued informing approving Petitioner for MA for May 2021 going forward with a divestment penalty period from May 1, 2021, through October 15, 2021, due to divestment in the amount of \$52,822.53 due to transfer of assets for less than fair market value.
6. On August 9, 2021, Petitioner requested hearing disputing the determination of divestment and imposition of divestment penalty period.

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.

DEPARTMENT POLICY

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.
- **Note:** 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.

MA will pay for other MA-covered services.

Do **not** apply a divestment penalty period when it creates an undue hardship; see *undue hardship* in this item. BEM 405

Personal Care & Home Care Contracts

Personal Care Contract means a contract/agreement that provides health care monitoring, medical treatment, securing hospitalization, visitation, entertainment, travel/transportation, financial management, shopping, home help or other assistance with activities of daily living.

Home Care Contract means a contract/agreement which pays for expenses such as home/cottage/care repairs, property maintenance, property taxes, homeowner's insurance, heat and utilities for the homestead or other real property of the client.

Home Care and Personal Care contracts/agreements may be between relatives or non-relatives. A relative is anyone related to the client by blood, marriage, or adoption.

Note: When relatives provide assistance or services they are presumed to do so for love and affection and compensation for past assistance or services shall create a rebuttable presumption of a transfer for less than fair market value. Fair market value of the services may be determined by consultation with area businesses which provide such services. Contracts/agreements that include the provision of companionship are prohibited.

All Personal Care and Home Care contracts/agreements, regardless of whether between a client and a relative or a client and a non-relative, must be considered and evaluated for divestment.

Personal Care and Home Care contracts/agreements shall be considered a transfer for less than fair market value unless the agreement meets all of the following:

- The services must be performed **after** a written legal contract/agreement has been executed between the client and the provider. The contract/agreement must be dated, and the signatures must be notarized. The services are not paid for until the services have been provided (there can be no prospective payment for future expenses or services); **and**
- At the time the services are received, the client cannot be residing in a nursing facility, adult foster care home (licensed or unlicensed), institution for mental diseases, inpatient hospital, intermediate care facility for individuals with intellectual disabilities or be eligible for home and community-based waiver, home health or home help; and
- At the time services are received, the services must have been recommended in writing and signed by the client's physician as necessary to prevent the transfer of the client to a residential care or nursing facility. Such services cannot include the provision of companionship; and

- The contract/agreement must be signed by the client or legally authorized representative, such as an agent under a power of attorney, guardian, or conservator. If the agreement is signed by a representative, that representative cannot be the provider or beneficiary of the contract/agreement.

- MDHHS will verify the contract/agreement by reviewing the written instrument between the client and the provider which must show the type, frequency and duration of such services being provided to the client and the amount of consideration (money or property) being received by the provider, or in accordance with a service plan approved by MDHHS.

Assets transferred in exchange for a contract/agreement for personal services/assistance or expenses of real property/homestead provided by another person after the date of application are considered available and countable assets. BEM 405

In this case, Petitioner's daughter [REDACTED] [REDACTED] has been serving as her power of attorney. [REDACTED] [REDACTED] completed home improvements on her home that were paid with Petitioner's funds in the amount of \$35,255. [REDACTED] [REDACTED] testified that these improvements were made in anticipation of Petitioner moving in with her but acknowledged that Petitioner did not move in with her. On August 2, 2021, [REDACTED] [REDACTED] provided some checks and other documents in support of her position.


The Department determined that the documentation provided by Ms. [REDACTED] on August 2, 2021, did not verify that Petitioner's assets were spent on her behalf and that the additional documents were not submitted within time to be considered in determining Petitioner's eligibility. The Department determined that divestment in the amount of \$52,822.53 had occurred due to transfers of less than fair market value and imposed a divestment penalty period from May 1, 2021, through October 15, 2021. Ms. [REDACTED] failed to provide sufficient evidence to establish that expenses paid out of Petitioner's bank account were for Petitioner's benefit or that other monies paid out were not properly characterized as gifts. Ms. [REDACTED] also failed to meet the criteria to establish a personal services contract with Petitioner. BEM 405

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 MA eligibility and divestment penalty period.

DECISION AND ORDER

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

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

DHHS

Pam Farnsworth
903 Telegraph
Monroe, MI 48161

Monroe County DHHS- via electronic mail

BSC4- via electronic mail

C. George- via electronic mail

EQAD- via electronic mail

Authorized Hearing Rep.

██████████ - via first class mail

██████████
██████████, OH ██████████

Petitioner

██████████ - via first class mail

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