



STATE OF MICHIGAN

GRETCHEN WHITMER  
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR

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Date Mailed: December 28, 2021  
MOAHR Docket No.: 21-005047  
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 December 2, 2021, from Lansing, Michigan. The Petitioner was represented by Attorney ██████████ ██████████. The Department of Health and Human Services (Department) was represented by Assistant Attorney General Geraldine Brown. Eric Carlson AP Supervisor appeared and testified for the Department. Department Exhibit 1, pp. 1-66 was received and admitted. Petitioner Exhibit A, pp. 1-18 was received and admitted.

**ISSUE**

Did the Department properly determine that divested assets when he made payments for improvements made to his son’s home totaling \$██████████

**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 request retroactive coverage for July 2021.
2. On September 15, 2021, a Health Care Coverage Determination Notice was sent to Petitioner informing him that Petitioner that the Department will not pay for long term care and home and community-based waiver services for ██████████ ██████████ from July 4, 2021, August 7, 2021, due to divestment, specifically because you or your spouse transferred assets for less than fair market value. (Ex. 1, pp. 61-65)

3. On [REDACTED] [REDACTED] Petitioner requested a hearing disputing the determination of divestment.
4. Petitioner paid for modifications to his son's home totaling \$[REDACTED] for installation of wheelchair ramp and walk in shower. (Ex. A, pp. 5-9)

### 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.

#### **LESS THAN FAIR MARKET VALUE**

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).

**Note:** Also see *annuity not actuarially sound* in this item.

Compensation must have tangible form and intrinsic value.

Relatives can be paid for providing services; however, assume services were provided for free when no payment was made at the time services were provided. A client can rebut this presumption by providing tangible evidence that a payment obligation existed at the time the service was provided (for example a written agreement signed at the time services were first provided). The policy in Bridges Administrative Manual (BAM) 130 allowing use of best available information or best judgment as verification does not apply. BEM 400, p.6

### **SSI-Related MA Only**

A homestead is where a person lives that they own, is buying or holds through a life estate. It includes the home in which they live, the land on which the home is located, and any other related buildings on the adjoining land. Adjoining land means land which is not completely separated from the home by land owned by someone else. Adjoining land may be separated by rivers, easements, and public rights-of-way (example: utility lines and roads). A homestead does not include income producing property located on the homestead property.

Exclude only one homestead for an asset group. If an individual claims two homesteads, exclude the homestead of the individual's choice. BEM 400 p.35

### **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 was 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, the only issue in dispute is whether the monies Petitioner paid towards improving his son's home totaling \$[REDACTED] is divestment.

The Department argued that Petitioner paid for repairs and improvements on his son's home and those payment should be considered divestment because Petitioner did not receive tangible value for those payments and because the repairs and improvements were made towards to the home of another. The Department pointed out that Petitioner has a homestead in Indiana that was excluded and that his son's residence in Michigan where the improvements were completed is not Petitioner's homestead.

Petitioner's attorney argued that Petitioner made the payments for repairs and improvements for his son's home because he intended to move into the home and needed the repairs and improvements to have wheelchair access to the home and to be able to care for himself in the home. Petitioner's attorney argued that Petitioner did receive tangible and intrinsic value because the repairs and improvements allowed him to reside in the home and care for himself.

The work done on Petitioner's son's home on its face was in anticipation of Petitioner residing in the home. A wheelchair accessible ramp was installed, and the bathroom was modified for a walk-in shower with grab bars. The purpose for this work being completed was to allow Petitioner to reside in his son's home comfortably. Petitioner's son and his family, other than Petitioner, had no need for a wheelchair accessible ramp or walk in shower. The purpose of this work being completed was not in an effort to gain MA eligibility for Petitioner's wife or to maintain assets. Therefore, these payments totaling \$ [REDACTED] were for another purpose and are not divestment. (BEM 405 p.11) In addition, Petitioner received value for the improvements to his son's home. Petitioner had the opportunity to reside in his son's home comfortably and maintain his quality of life, that opportunity has tangible and intrinsic value to Petitioner.

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's payments towards improvements to his son's home was divestment.


### **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. Delete the divestment totaling \$ [REDACTED]
2. Activate MA coverage going back to July 2021 if Petitioner is found otherwise eligible.

AM/nr

  
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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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Mason County DHHS- via electronic mail

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**Petitioner**

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