



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: April 21, 2022
MOAHR Docket No.: 22-000519
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 March 22, 2022, via teleconference. The Petitioner was represented by Attorneys ██████████ ██████████ and ██████████ ██████████ ██████████ ██████████ Petitioner's daughter and power of attorney appeared and testified for Petitioner. The Department of Health and Human Services (Department) was represented by Assistant Attorney General Stephanie Service. Laura McLaurin appeared and testified for the Department. Department Exhibit 1, pp. 1-37 was received and admitted. Petitioner Exhibit A, pp. 1-20 was received and 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 December 21, 2021, Petitioner purchased a Silverado truck from her daughter ██████████ ██████████ for the purchase price of \$██████████. The purchase price was agreed to based on a blue book estimate.
2. On December 30, 2021, Petitioner applied for Long Term Care Medical Assistance, (MA-LTC).
3. On January 4, 2022, a Verification Checklist was sent to Petitioner requesting asset verifications including registration and insurance information for the Silverado truck.

4. On January 31, 2022, a Health Care Coverage Determination Notice was sent to Petitioner informing her that she was approved for MA-LTC with a divestment penalty period from December 1, 2021, to April 29, 2022.
5. On February 2, 2022, Petitioner requested hearing disputing the determination of divestment.
6. At the time of application, Petitioner's daughter [REDACTED] [REDACTED] was residing in Florida and the Silverado truck owned by Petitioner was in Florida.

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.

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 (October 2021)

**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). BEM 405

**SSI-Related
MA Vehicle
Exclusion**

SSI-Related MA Only

Exclude one motorized vehicle owned by the asset group. BEM 400

AVAILABLE

**FIP, RCA, SDA, G2U, G2C, RMA, SSI-Related MA Only,
CDC and FAP**

An asset must be available to be countable. **Available** means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400

In this case, Petitioner purchased a Silverado truck from her daughter on December 21, 2021, for the purchase price of \$[REDACTED]. The Silverado truck was previously owned by

Petitioner's daughter and was located in Florida when it was purchased and at the time of application. The purchase price for the Silverado truck was based on the blue book value. The Silverado truck was titled and insured in Petitioner's name after she purchased the vehicle. Petitioner's daughter credibly testified that the expectation was that the Silverado truck would come to Michigan when she returned from Florida and that it would be used to transport Petitioner for appointments and outings while Petitioner was in the nursing home.

The Department's position is that Petitioner's purchase of the Silverado truck was divestment because the truck was not available to Petitioner in Michigan while the Silverado truck was in Florida. The Department further contends that the purchase of the truck was not made in an arm's length transaction and therefore that Petitioner did not receive fair market value for the purchase price because she had no access to the vehicle and received no value. Based on that, the Department made a finding of divestment in the amount of \$[REDACTED] and imposed a divestment penalty period from December 1, 2021, through April 29, 2022.

Petitioner purchased a Silverado truck for \$[REDACTED] and received approximately that value based on the blue book price. The Department utilizes the blue book price to approximate value, and it was reasonable for Petitioner to utilize that estimate to arrive at a purchase price for the vehicle. The purchase was not an arm's length transaction, but Petitioner received fair market value based on the blue book estimate. Petitioner did not pay \$[REDACTED] for a truck that was worth substantially less than that. Petitioner did not have access to the Silverado truck at the time of application, but it was anticipated that family members would use the vehicle to transport her to outings and appointments in the future. This circumstance is comparable to a recipient who may have bought a vehicle and was not able to take possession for several months due to shipping delays. The recipient received full value for the vehicle even though use of the vehicle was delayed. Since Petitioner paid fair market value and received fair market value for the Silverado truck the finding of divestment was improper and incorrect. BEM 405

Another point of contention is whether the vehicle was available to Petitioner. The Department definition of available states that "An asset must be available to be countable. Available means that someone in the asset group has the legal right to use or dispose of the asset." BEM 400 Petitioner has the legal right to use the Silverado truck because it is titled in her name and has the legal right to dispose of the asset. In fact, she is the only person who has the right to dispose of the asset because she would have to sign over the title. The Silverado truck is found to be available to Petitioner because she satisfies both prongs of the definition, she has a legal right to use the truck and she has a right to dispose of the truck.

It is not uncommon for nursing home residents to have a valuable vehicle that does not follow them to the nursing home. Policy allows for one vehicle to be excluded and does not have any requirements or limitations on that exemption in terms of whether the recipient is able to drive the vehicle, where the vehicle is located, the value of the vehicle, when the vehicle was purchased or who it was purchased from. BEM 400

Petitioner purchased an excluded asset for fair market value prior to applying for MA-LTC and that asset should have been excluded when determining her asset eligibility.

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 made a finding of divestment and imposed a divestment penalty period.


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 finding of divestment.
2. Lift the divestment penalty.
3. Active MA-LTC going back to December 1, 2021, if Petitioner 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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