[redacted]
MI [redacted]

Date Mailed: April 26, 2022
MOAHR Docket No.: 22-000982
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 April 13, 2022, from Lansing, Michigan. The Petitioner was represented by Authorized Hearings Representative [redacted] Area Agency on Aging Medicaid Team Leader. Petitioner's daughter [redacted] appeared and testified. The Department of Health and Human Services (Department or Respondent) was represented by Authorized Hearings Representative Laurel Palermo, Long Term Care Specialist and Megan Sperk, Assistance Payments Supervisor.

Petitioner's Exhibits 1 pages 1-69, Petitioner's Exhibits 2 pages 1-4 and Departments Exhibit A-I pages 1-164 were admitted as evidence.

ISSUE

Did the Department properly determine that Petitioner should have a divestment penalty for April 1, 2022, through October 18, 2022?

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 is a Medical Assistance Long Term Care beneficiary (MA-LTC).

2. Petitioner was approved for and received MA-LTC and was determined to be eligible both with income and assets.

3. On April 23, 2021, an approved Medical Assistance case was transferred to LTC worker DV, due to Petitioner's enrollment in the waiver program.

4. Upon review of the case the worker learned that the homestead was sold in 2019 but not reported as sold (verifications due May 3, 2021).

5. On April 23, 2021, a verification checklist was issued requesting the home sale and expenditures.

6. On May 7, 2021, the Department received a copy of the sales agreement for [redacted] Proceeds from the sale were $[redacted]

7. On September 10, 2021, a verification checklist was sent requesting information to rule out divestment of $[redacted] in unidentified withdrawals from [redacted] Checking account.

8. The Department asked for verification of the following transactions due September 20, 2021: Cash withdrawals between 5/22/19 & 1/29/21; [redacted], $[redacted] paid to [redacted] $[redacted], $[redacted] paid to [redacted] $[redacted] paid [redacted] (you must verify what the payment was for). [redacted] paid to [redacted] Aug 2020. 2). Receipts; [redacted] & $[redacted] for [redacted] Moving, 3), Receipts; $[redacted] $[redacted] $[redacted], $[redacted] $[redacted] for 2 [redacted], 4). Total of $[redacted] [redacted] [redacted] [redacted] 5). Total of [redacted] [redacted] [redacted] [redacted] 6). Receipts for total of $[redacted] misc. purchases from [redacted] [redacted] between 7/23/19 & 1/29/21, 7). Receipts for total $[redacted] [redacted] (5/22 - 9/23/20), 8). [redacted] [redacted] 9). Verify source of cash deposit(s) $[redacted], $[redacted] Jun 2020. 10). Cash obtained from Visa, [redacted] Aug 2020 (Submit copy of Visa card to verify holder of card)

9. Due to COVID restrictions, the case was pended to close, but remained open.

10. Worker DV retired.

11. The case was transferred to a new caseworker.

12. On January 13, 2022, a verification checklist was issued, extending the time to provide documentation.

13. On February 3, 2022, it was determined that the home sold for more than fair market value (FMV), but proof of where the proceeds were spent were not provided. It was determined that some of the receipts indicated a shipping address different than Petitioner's but had Petitioner's billing address.

14. On February 3, 2022, the waiver agency representative indicated that there was nothing further to provide to the Department.

15. On February 24, 2022, the Department sent Petitioner a Benefit Notice indicating that Medicaid was approved with a divestment penalty of April 1, 2022-October 18, 2022, based upon its determination that a divestment

has occurred based on assets transferred. Medicaid will not pay for your long-term care or home and community-based waiver services from April 1, 2022, through October 10, 2022, because you or your spouse transferred assets or income for less than fair market value in the amount of $[redacted]

16. On [redacted] the Michigan Office of Administrative Hearings and Rules received a Request for Hearing to contest the divestment penalty indicating that "documents and verifications to reduce or eliminate the divestment penalty were turned in to the Department multiple times. Documentation of verifications were dismissed as insufficient, and we disagree."

17. On March 11, 2022, the Department filed a Hearing Summary and attached documents with the Michigan Office of Administrative Hearings and Rules.

18. On April 13, 2022, the hearing was held.

19. On April 15, 2022, Respondent's Representative filed a Response to Petitioner's Exhibits stating that some of the expenses were calculated in error, (the September 11, 2020, [redacted] purchase of $[redacted] and the May 20, 2019, [redacted] moving expense [redacted] = totaling $[redacted]). The [redacted] invoices were not received due to technical issues. Respondent requests that Petitioner be reallowed to submit the invoices for [redacted]

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

Title XIX of the Social Security Act, commonly referred to as "The Medicaid Act," provides for medical assistance services to individuals **who lack the financial means to obtain needed health care**. 42 U.S.C. §1396. (Emphasis added)

The Medicaid program is administered by the federal government through the Centers for Medicaid and Medicare Services (CMS) of the Department of Health and Human Services (HHS). The state and federal governments share financial responsibility for Medicaid services. Each state may choose whether or not to participate in the Medicaid program. Once a state chooses to participate, it must operate its Medicaid program in accordance with mandatory federal requirements, imposed both by the Medicaid Act and by implementing federal regulations authorized under the Medicaid Act and promulgated by HHS.

Participating states must provide at least seven categories of medical services to persons determined to be eligible Medicaid recipients. 42 USC §1396a(a)(10)(A), 1396d(a)(1)-(5), (17), (21). One of the seven mandated services is *nursing facility services*. 42 USC §1396d(a)(4)(A).

For medical assistance eligibility, the Department has defined an asset as "any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights." NDAC 75-02-02.1-01(3). Under both federal and state law, an asset must be "actually available" to an applicant to be considered a countable asset for determining medical assistance eligibility. *Hecker, 527 N.W.2d at 237 (On Petition for Rehearing); Hinschberger v. Griggs County Social Serv., 499 N.W.2d 876, 882 (N.D.1993); 42 U.S.C. § 1396a(a)(17)(B)*; 1 J. *Krauskopf, R. Brown, K. Tokarz, and A. Bogutz, Elderlaw: Advocacy for the Aging § 11.25 (2d ed. 1993).* Yet, "actually available" resources "are different from those *in hand." Schweiker v. Gray Panthers, 453 U.S. 34, 48, 101 S.Ct. 2633, 2642, 69 L.Ed.2d 460 (1981)* (emphasis in original). NDAC 75-02-02.1-25(2) explains: Only such assets as are actually available will be considered. Assets are actually available when at the disposal of an applicant, recipient, or responsible relative; when the applicant, recipient, or responsible relative has a legal interest in a liquidated sum and has the legal ability to make the sum available for support, maintenance, or medical care; or when the applicant, recipient, or responsible relative has the lawful power to make the asset available, or to cause the asset to be made available. Assets will be reasonably evaluated⋯ *See also45 C.F.R. § 233.20(a)(3)(ii)(D)*.

As noted in *Hecker,* if an applicant has a legal ability to obtain an asset, it is considered an "actually available" resource. The actual-availability principle primarily serves "to prevent the States from conjuring fictional sources of income and resources by imputing financial support from persons who have no obligation to furnish it or by overvaluing assets in a manner that attributes non-existent resources to recipients." *Heckler v. Turner, 470 U.S. 184, 200, 105 S.Ct. 1138, 1147, 84 L.Ed.2d 138 (1985).*

The focus is on an applicant's actual and practical ability to make an asset available as a matter of fact, not legal fiction. *See Schrader v. Idaho Dept. of Health and Welfare,*

768 F.2d 1107, 1112 (9th Cir.1985). *See also* *Lewis v. Martin,* 397 U.S. 552, 90 S.Ct. 1282, 25 L.Ed.2d 561 (1970) (invalidating California state regulation that presumed contribution of non-AFDC resources by a non-legally responsible and non-adoptive stepfather or common law husband of an AFDC recipient's mother).

Determining whether an asset is "actually available" for purposes of medical assistance eligibility is largely a fact-specific inquiry depending on the circumstances of each case. *See, e.g., Intermountain Health Care v. Bd. of Cty. Com'rs,* 107 Idaho 248, 688 P.2d 260, 264 (Ct.App.1984*); Radano v. Blum,* 89 A.D.2d 858, 453 N.Y.S.2d 38, 39 (1982*); Haynes v. Dept. of Human Resources,* 121 N.C.App. 513, 470 S.E.2d 56, 58 (1996*)*. Interpretation of the "actually available" requirement must be "reasonable and humane in accordance with its manifest intent and purpose⋯" *Moffett v. Blum,* 74 A.D.2d 625, 424 N.Y.S.2d 923, 925 (1980*)*. That an applicant must sue to collect an asset the applicant has a legal entitlement to usually does not mean the asset is actually unavailable. *See, e.g., Wagner v. Sheridan County S.S. Bd.,* 518 N.W.2d 724, 728 (N.D.1994); *Frerks v. Shalala,* 52 F.3d 412, 414 (2d Cir.1995); *Probate of Marcus,* 199 Conn. 524, 509 A.2d 1, 5 (1986); *Herman v. Ramsey Cty. Community Human Serv.,* 373 N.W.2d 345, 348 (Minn.Ct.App.1985). *See also Ziegler v. Dept. of Health & Rehab. Serv.,* 601 So.2d 1280, 1284 (Fla.Ct.App.1992) At issue here is the methodology utilized in determining the availability of an individual's "resources" for purposes of evaluating his or her eligibility. SSI recipients, and thus SSI-related "medically needy" recipients, may not retain resources having a value in excess of $2,000. *42 U.S.C. § 1382(a)(1)(B)*.

The regulations governing the determination of eligibility provide that resources mean cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his support and maintenance. If the individual has the right, authority or power to liquidate the property, or his share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual (or spouse).*20 C.F.R. § 416.1201(a)*.

After the Medicaid program was enacted, a field of legal counseling arose involving asset protection for future disability. The practice of "Medicaid Estate Planning," whereby "individuals shelter or divest their assets to qualify for Medicaid without first depleting their life savings," is a legal practice that involves utilization of the complex rules of Medicaid eligibility, arguably comparable to the way one uses the Internal Revenue Code to his or her advantage in preparing taxes. See generally *Kristin A. Reich, Note, Long-Term Care Financing Crisis-Recent Federal and State Efforts to Deter Asset Transfers as a Means to Gain Medicaid Eligibility*, 74 N.D. L.Rev. 383 (1998). Serious concern then arose over the widespread divestiture of assets by mostly wealthy individuals so that those persons could become eligible for Medicaid benefits. Id.; see also *Rainey v. Guardianship of Mackey*, 773 So.2d 118 (Fla. 4th DCA 2000). As a result, Congress enacted several laws to discourage the transfer of assets for Medicaid qualification purposes. See generally *Laura Herpers Zeman, Estate Planning: Ethical Considerations of Using Medicaid to Plan for Long-Term Medical Care for the Elderly, 13 Quinnipiac Prob. L.J. 187 (1988)*. Recent attempts by Congress imposed periods of ineligibility for certain Medicaid benefits where the

applicant divested himself or herself of assets for less than fair market value. *42 U.S.C. § 1396p(c)(1)(A); 42 U.S.C. § 1396p(c)(1)(B)(i); Fla. Admin. Code R. 65A-1.712(3).* More specifically, if a transfer of assets for less than fair market value is found within 36 months of an individual's application for Medicaid, the state must withhold payment for various long-term care services, i.e., payment for nursing home room and board, for a period of time referred to as the penalty period. *Fla. Admin. Code R. 65A-1.712(3)*. Medicaid does not, however, prohibit eligibility altogether. It merely penalizes the asset transfer for a certain period of time. See *generally Omar N. Ahmad, Medicaid Eligibility Rules for the Elderly Long-Term Care Applicant, 20 J. Legal Med. 251 (1999).* [*Thompson v. Dep't of Children & Families*, *835 So.2d 357*, *359-360 (Fla App, 2003).]*

In *Gillmore* the Illinois Supreme Court recognized this same history, noting that over the years (and particularly in 1993), Congress enacted certain measures to prevent persons who were not actually "needy" from making themselves eligible for Medicaid:
In 1993, Congress sought to combat the rapidly increasing costs of Medicaid by enacting statutory provisions to ensure that persons who could pay for their own care did not receive assistance. Congress mandated that, in determining Medicaid eligibility, a state must "look-back" into a three- or five-year period, depending on the asset, before a person applied for assistance to determine if the person made any transfers solely to become eligible for Medicaid. *See 42 U.S.C. § 1396p(c)(1)(B) (2000)*. If the person disposed of assets for less than fair market value during the look-back period, the person is ineligible for medical assistance for a statutory penalty period based on the value of the assets transferred. *See 42 U.S.C.§ 1396p(c)(1)(A) (2000).* [*Gillmore,* 218 Ill 2d at 306 (emphasis added).]

See, also, *ES* v. *Div. of Med. Assistance and Health Servs*., *412 NJ Super 340, 344; 990 A.2d 701 (2010)* (Noting that the purpose of this close scrutiny while "looking back" is "to determine if [the asset transfers] were made for the sole purpose of Medicaid qualification.").

This statutory "look-back" period, noted in *Gillmore* and *Thompson* and contained within 42 USC 1396p(c)(1), requires a state to "look-back" a number of years (in this case five) from the date of an asset transfer to determine if the applicant made the transfer solely to become eligible for Medicaid, which can be established if the transfer was made for less than fair market value. See 42 USC 1396p(c)(1); DHS Program Eligibility Manual (PEM) 405, pp 1, 4; see also *Gillmore*, 218 Ill 2d at 306.

"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." BEM 405, p 5.

A transfer for less than fair market value during the "look-back" period is referred to as a "divestment," and unless falling under one of several exclusions, subjects the applicant to a penalty period during which payment of long-term care benefits is suspended. See, generally BEM 405, pp 1, 5-9. "Congress's imposition of a penalty for the disposal of assets or income for less than fair market value during the look-back period is intended to maximize the resources for Medicaid for those truly in need." *ES*, 412 NJ Super at 344. See also *Mackey v Department of Human Services, Michigan Court of Appeals, Docket No. 288966, decided September 7, 2010*.

Pertinent Department policy states:

> Assets must be considered in determining eligibility or SSI related categories. Assets mean cash, any other personal property and real property. (BEM, Item 400 Page 1). Countable assets cannot exceed the applicable asset limit. Not all assets are counted. Some assets are counted for one program but not for another program. (BEM Item 400, Page 1).
>
> The department is to consider both of the following to determine whether and how much of an asset is countable: An asset is countable if it meets the availability test and is not excluded. The department is to consider the assets of each person in the asset group. (BEM, Item 400, Page 1).
>
> Asset eligibility exists when the asset groups countable assets are less than or equal to the applicable asset limit at least one day during the month being tested. (BEM, Item 400, Page 4). An application does not authorize MA for future months if the person has excess assets on the processing date.
>
> The SSI related MA asset limit for SSI related MA categories that are not Medicare savings program or QDWI is $2000.00 for an asset group for one person and $3000.00 for an asset group of 2 people. BEM, Item 400 Page 5.
>
> An asset must be available to be counted. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM, Item 400, Page 6. The department is to assume an asset is available unless the evidence shows that it is not available.

In the instant case, Petitioner had a homestead which was excluded from countable assets in accordance with Department policy. The home stead was sold for $[redacted] and Petitioner realized proceeds from the sale in the amount of $[redacted]

BEM, Item 405, states:

> Divestment results in a penalty period in MA, **not** ineligibility. Divestment is a type of transfer of a resource and not an amount of resources transferred.
>
> Divestment means a transfer of a resource (see RESOURCE DEFINED below and in glossary) by a client or his spouse that are all of the following:
>
> - Is within a specified time; see LOOK-BACK PERIOD in this item.
> - Is a transfer for LESS THAN FAIR MARKET VALUE;
> - Is not listed below under TRANSFERS THAT ARE NOT DIVESTMENT
>
> See Annuity Not Actuarially Sound and Joint Owners and Transfers below 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:

- LTC services.
- Home and community-based services.
- Home Help.
- Home Health. BEM, Item 405, page 1

Resource means all the client's and his spouse's assets and income. It includes all assets and all income, even countable and/or excluded assets, the individual or spouse receive. It also includes all assets and income that the individual (or their spouse) were entitled to but did **not** receive because of action by one of the following:

- The client or spouse.
- A person (including a court or administrative body) with legal authority to act in place of or on behalf of the client or the client's spouse.
- Any person (including a court or administrative body) acting at the direction or upon the request of the client or his spouse. BEM, Item 405, page 2

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. Not all transfers are divestment. Examples of transfers include:

- Selling an asset for fair market value (not divestment).
- Giving an asset away (divestment).
- Refusing an inheritance (divestment).
- Payments from a **MEDICAID TRUST** that are **not** to, or for the benefit of, the person or his spouse; see BEM 401 (divestment).
- Putting assets or income in a trust; see BEM 401.
- Giving up the **right** to receive income such as having pension payments made to someone else (divestment).
- Giving away a lump sum or accumulated benefit (divestment).
- Buying an annuity that is **not** actuarially sound (divestment).
- Giving away a vehicle (divestment).
- Putting assets or income into a Limited Liability Company (LLC)BEM, item 405, page 2

Department policy states that it is **not** divestment to transfer a homestead to the client's:

- Spouse; see Transfers Involving Spouse above.
- Blind or disabled child; see Transfers Involving Child above.
- Child under age 21.
- Child age 21 or over who:

  - Lived in the homestead for at least two years immediately before the client's admission to LTC or BEM 106 waiver approval, **and**

  - Provided care that would otherwise have required LTC or BEM 106 waiver services, as documented by a physician's (M.D. or D.O.) statement. BEM Item 405, page 8.

Policy also states that the uncompensated value of a divested resource is

- The resource's cash or equity value.
- Minus any compensation received.
- The uncompensated value of a promissory note, loan, or mortgage is the outstanding balance due on the "Baseline Date" BEM, Item 405, page 12.

The first step in determining the period of time that transfers can be evaluated for divestment is determining the baseline date; see baseline date in this item. Once the baseline date is established, you determine the look-back period. The look back period is 60 months prior to the baseline date. Transfers that occur on or after a client's baseline date must be considered for divestment. In addition, transfers that occurred within the 60-month look-back period must be considered for divestment. BEM 405 page 5

A person's baseline date is the first date that the client was eligible for Medicaid and one of the following:

- In LTC.
- APPROVED FOR THE WAIVER; see BEM 106.
- Eligible for Home Health services.
- Eligible for Home Help services

A client's baseline date does not change even if one of the following happens:

- The client leaves LTC.
- The client is no longer APPROVED FOR THE WAIVER; see BEM 106.
- The client no longer needs Home Help.

- The client no longer needs Home Health. BEM 405, page 6

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. BEM 405 page 7 (Emphasis Added)

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 page 8

The uncompensated value of a divested resource is

- The resource's cash or equity value.

- Minus any compensation received.

- The uncompensated value of a promissory note, loan, or mortgage is the outstanding balance due on the date of application. BEM 045 page 15

The Department Representative Argued:

On April 13, 2022, the hearing was held in response to Petitioner, Kathy Cullen's request. At the time of the hearing, the Petitioner's filing representative, Celeste Ezzo with Area Agency on Aging, submitted a response consisting of 69 pages, to MOAHR. The DHHS office did not receive these documents prior to the hearing.

Per page 2 of the Petitioner's response, the spreadsheet column titled Verification Submitted, states how the documentation was submitted including the date of submission in the next column. Regarding the numerous transactions involving [redacted] and [redacted], these proofs were not verified with an invoice, receipt, or statement to substantiate purpose of debit, as requested. The Petitioner indicates these transactions were verified using "client statement".

Petitioner stated, on page 7 of Petitioner's response, the 8/11/20 $[redacted] and 8/18/20 $[redacted] "payments" or `accidental transfers, totaling [redacted] were repaid on 8/17/20 with four (4) separate deposits in the amounts of $[redacted], $[redacted], $[redacted] and $[redacted]. First, proof of "what" the payments were for, was not provided. Secondly, proof of "who" made these deposits and purpose of deposits, was not provided. Thirdly, why were the deposits made in advance to the alleged $[redacted] refund?

Petitioner stated during the hearing, the $[redacted] payment to [redacted] on 8/5/20 was in error. DHHS responded during the hearing, to please see page 104 of the DHHS hearing packet where the transfer was indeed transferred to [redacted] in the amount of $[redacted].

Petitioner stated her rental expense was verified by proof of the ledger submitted on 1/7/22 via email to LTC specialist, Laurel Palermo. Please see attached Exhibit 1, pages 1-1 thru 1-4, which consists of two (2) separate emails on 1/7/22. Each email includes separate attachments. I have included a snapshot of the emails from filing representative [redacted] which lists each attachment and each attachment's title. Please note, neither of these emails, nor the attachments, include proof of Petitioner's rental expense. Therefore, this on going debt was included in the divestment penalty.

Petitioner stated, the [redacted] purchase, [redacted] moving expense invoice and [redacted] invoices were submitted via 1/21/22 email. Please see Exhibit 2, pages 2-1 thru 2-3. DHHS did locate the [redacted] purchase invoice and [redacted] moving expense invoice. The [redacted] attached invoices were not able to open and view.

At this time, the department agrees the 9/11/20 [redacted] purchase $[redacted] and the 5/20/19 [redacted] moving expense $[redacted] totaling $[redacted] were calculated in error and request the court to decrease the divestment by this amount.

As for the [redacted] invoices, it appears Petitioner intended to submit these invoices timely. Due to technical issues and the department did not notify the Petitioner of this issue, the department requests the court to allow the Petitioner these expenses following the re-submission of these invoices equaling the numerous debits listed on the spreadsheet.

The department has conceded on the record that some of Petitioner's expenses may be legitimate expenditures which are not subject to divestment. The Department requests that Petitioner be allowed to resubmit the invoices of [redacted] for reassessment. The Department's decision must be reversed.

DECISION AND ORDER

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 has not established by a preponderance of the evidence contained on the record that the divestment penalty was appropriately applied.

Accordingly, the Department's decision is **REVERSED in accordance with the Department's request**.

ORDER

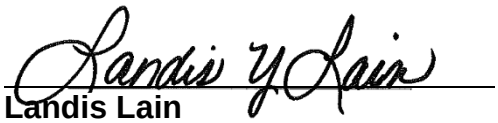
NOW THEREFORE, IT IS ORDERED that:

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. Petitioner shall be allowed to submit invoices for expenditures.

2. The Department shall reconsider allowable expenses and redetermine the divestment amount and the divestment penalty, if any;

3. The Department shall notify Petitioner of its determination in writing.



LL/ml

Landis Lain
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

Electronic Mail Recipients:

MDHHS-Allegan-Hearings
C. George
EQAD
MOAHR

First Class Mail Recipient, Petitioner

[redacted]
MI [redacted]

First Class Mail Recipient, AHR:

[redacted]
MI [redacted]