



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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██████████, MI ██████████

Date Mailed: June 16, 2022  
MOAHR Docket No.: 22-001726  
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 May 18, 2022, from Lansing, Michigan. The Petitioner was represented by daughter and power of attorney ██████████ ██████████ ██████████ and ██████████ also appeared and testified for the Petitioner. The Department of Health and Human Services (Department) was represented by Kim Kilmer AP Supervisor. Department Exhibit 1, pp. 1-104 was received and admitted. Petitioner Exhibit A, pp. 1-9 was received and admitted.

### **ISSUE**

Did the Department properly determine that Petitioner divested assets and impose 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 Long Term Care Medical Assistance (MA-LTC).
2. On March 8, 2022, a Health Care Coverage Determination Notice was sent to Petitioner informing her that she was eligible for MA-LTC with a divestment penalty period from February 1, 2022, through June 12, 2022, due to alleged divestment of \$43,648.
3. On March 18, 2022, Petitioner requested hearing disputing the finding of divestment and imposition of divestment penalty period.

4. Petitioner sold her home on March 26, 2020, for \$125,000.
5. Petitioner distributed \$43,648 from the proceeds of the sale of her home in equal shares to her four children.
6. Petitioner's children completed extensive clean up and repair work on Petitioner's home prior to the sale.
7. Petitioner was in good health in March 2020 and did not anticipate needing long term care.

### **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. 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.

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

### **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.

Mr. Smith, age 40, was in good health when he gave his vacation cottage to his nephew. The next day Mr. Smith was in an automobile accident. His injuries require long-term care. The transfer was not divestment because Mr. Smith could not anticipate his need for LTC services. BEM 405

In this case, Petitioner sold her home in March 2020 for \$125,000 after extensive clean up and repair work completed on the home by her children prior to it being listed for sale. Petitioner distributed \$43,648 from the proceeds of the sale of her home to her children in equal shares as compensation for the work they did on the home and other assistance they gave to Petitioner. Petitioner retained the remainder of the proceeds of the sale of her home. Petitioner was in good health in March 2020 and did not anticipate needing long term care. Petitioner did not distribute the proceeds from the sale of her home to qualify or remain eligible for Medicaid and therefore the transfer made in March 2020, is deemed to be a transfer for another purpose and not divestment. BEM 405 It was very telling the transfer was two years prior to Petitioner applying for long term care and the transfer did not leave Petitioner with just under the asset limit for MA-LTC. If the transfer had occurred in the months prior to Petitioner entering long term after her health had been declining and if the transfer put her just under the asset limit, then it would have been much more indicative of divestment.

The Department argued that the monies distributed to Petitioner's children in March 2020, was comparable to a personal care contract or a home care contract and since the arrangement was not agreed to in writing prior to the payments being made and it did not meet other requirements under that section of department policy it was divestment. However, the Department assessment did not address the repair and clean up work that Petitioner's children completed on the home prior to it being listed for sale that increased the value of the home.

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 divested assets 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. Lift the finding of divestment and divestment penalty period.
2. Activate MA-LTC coverage going back to February 1, 2022, if Petitioner is 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

**Via-Electronic Mail :**

**DHHS**  
Kimberly Kilmer  
Osceola/Mecosta County DHS  
800 Watertower  
Big Rapids, MI 49307

Osceola/Mecosta County DHHS  
BSC3  
D. Smith  
EQAD

**Via-First Class Mail :**

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]

**Authorized Hearing Rep.**

[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]