



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: July 7, 2022
MOAHR Docket No.: 22-001885
Agency No.: ██████████
Petitioner: ██████████ ██████████

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, telephone hearing was held on June 16, 2022, from Lansing, Michigan. Petitioner was represented by his attorney Susan Chalgian. The Department was represented by Assistant Attorney General Chantal B. Fennessey. Laurel Palermo and Megan Sterk testified on behalf of the Department.

ISSUE

Did the Department of Health and Human Services (Department) properly determine that Petitioner's eligibility for Long Term Care Medical Assistance (MA) should be subject to a divestment penalty?

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 ██████████ ██████████ ██████████ the Department received Petitioner's application for Medical Assistance (MA) where he reported being admitted to long term care. Exhibit A.
2. On November 17, 2021, the Department notified Petitioner that he was eligible for Medical Assistance (MA) with a \$979 monthly deductible. Exhibit G.
3. On January 28, 2022, the Department sent Petitioner a Verification Checklist (DHS-3503) requesting copies of bank statements during the previous five years. Exhibit C.

4. Petitioner provided the Department with copies of bank statements and cancelled checks including verification of a \$46,636.44 purchase on July 22, 2021, which was reported to be the purchase of a car. Exhibit I.
5. On April 4, 2022, the Department notified Petitioner that he was eligible for Long Term Care, but those benefits would be subject to a divestment penalty from April 1, 2022, through June 27, 2023, which was based on a finding that a \$142.652 divestment had occurred. Exhibit H and I.
6. On April 29, 2022, the Department received Petitioner's request for a hearing protesting.

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 through 42 USC 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 through 42 CFR 420.25. The Department administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.103 through MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

Assets means cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees, and fences. Condominiums are real property. Personal property is any item subject to ownership that is not real property. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (January 1, 2022), pp 1-7.

A vehicle is any registered or unregistered vehicle used for transportation. Vehicles used for transportation include, but are not limited to, passenger cars, trucks, motorcycles, boats, snow mobiles, animal-drawn vehicles, and even animals. BEM 400, p 40.

Divestment is a type of transfer of a resource and not an amount of resources transferred. Divestment results in a penalty period in MA, not ineligibility. Divestment means the transfer of a resource 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?
- Is not listed under transfers that are not divestment in this item.

Converting an asset from one form to another of equal value is not divestment even if the new asset is exempt. Most purchases are conversions. For example, using \$5,000 from savings to buy a used car priced at \$5,000 is conversion for equal value. BEM 405, p 10.

The divestment penalty period starts on the date which the individual is eligible for Medicaid and would otherwise be receiving institutional level care (LTC, MIChoice waiver, home help, or home health services), and is not already part of a penalty period. When a medical provider is paid by the individual, or by a third party on behalf of the individual, for medical services received, the individual is not eligible for Medicaid in that month and the month is not a penalty month. That month cannot be counted as part of the penalty period. This does not include payments made by commercial insurance or Medicare. BEM 405, pp 14-15.

On [REDACTED] [REDACTED] the Department received Petitioner's application for MA benefits where he reported being admitted to long term care. Petitioner's application was approved as of November 1, 2021.

Later, it was discovered that Petitioner's October 29, 2021, had not been properly processed, and on January 28, 2022, the Department began requesting verification of Petitioner's assets in the prior 60 months to determine his eligibility for long term care. On April 4, 2022, the Department made its determination that a divestment had occurred, and that a divestment penalty would apply from April 1, 2022, through June 27, 2023.

Department policy instructs the Department to start a divestment penalty on the date which the individual is eligible for MA benefits. Policy does not require that a divestment penalty start after the Department completes its calculation of the divestment amount. No evidence was presented that Petitioner failed to provide the Department with timely verification of his financial circumstances leading up to his admission to long term care. This Administrative Law Judge finds no authority to not start the divestment penalty on the date Petitioner became eligible for MA benefits as directed by BEM 405. The hearing record supports a finding that the delay of the start of the penalty was caused by improper processing of the application and not a failure to report.

Further, Department policy excludes the value of a vehicle, registered or unregistered, from countable assets for the purposes of MA eligibility. Eligibility for long term care is penalized when an application divests resources for the purposes of becoming eligible for MA benefits. Transfers that do not meet the definition of divestments are specifically outlined in BEM 405, and among these transfers that are not considered divestment include converting an asset from one form to another of equal value.

In this case, Petitioner purchased a car, and the hearing record supports a finding that this transfer was a conversion of cash assets to an excludable asset. This Administrative Law Judge finds no authority for requiring Petitioner establish his ability to drive the vehicle and it is not required by BEM 400 for a vehicle be registered.

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 eligibility for long term care should be subject to a divestment penalty effective April 1, 2022.

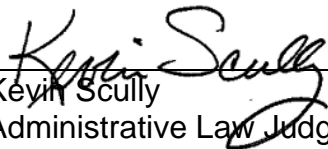
DECISION AND ORDER

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. Initiate a determination of the Petitioner's eligibility for Medical Assistance (MA) and long term care as of October 1, 2021.
2. Provide the Petitioner with adequate notice describing the Department's revised eligibility determination.
3. Issue the Petitioner any retroactive benefits he may be eligible to receive, if any.

KS/nr



Kevin Scully
Administrative Law Judge
Michigan Office of Administrative Hearings and
Rules (MOAHR)

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:

Counsel for Respondent

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Michigan Department of Attorney
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DHHS

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Interested Parties

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