



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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

Date Mailed: September 14, 2022  
MOAHR Docket No.: 22-003286  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

### **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 September 12, 2022. The Petitioner was represented by her guardian, authorized representative, and authorized hearings representative (AHR) Family Option Services employee, Michelle Pearce. The Department of Health and Human Services (Department) was represented by Franklin Cabello, Eligibility Specialist. Erik Lewis, Assistance Payments Supervisor, observed the hearing.

### **ISSUE**

Did the Department properly apply a divestment penalty in determining Petitioner's Medical Assistance (MA) Program eligibility?

### **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 entered Long-Term Care (LTC) on [REDACTED], 2021.
2. MA and Retroactive MA applications were received by the Department on Petitioner's behalf in November 2021 and January 2022 through different guardians or representatives, verifications were requested as they related to these applications, and both were denied for failure to verify requested information.
3. On April 6, 2022, a new guardian was appointed for Petitioner, the same guardian that appeared at the hearing.

4. On [REDACTED], 2022, a new MA and Retroactive MA application was received by the Department.
5. On May 16, 2022, Petitioner's guardian and her Department caseworker spoke about money that seemed to be missing from Petitioner's bank accounts and closed bank accounts and Petitioner's guardian informed the Department that Petitioner's son had not been forthcoming with information about Petitioner's accounts.
6. The same day, believing that he had all necessary information, Petitioner's Department caseworker processed her April 2022 MA and Retroactive MA application resulting in MA approval effective January 1, 2022, and ongoing, subject to a divestment penalty from January 1, 2022 through May 16, 2022 due to a transfer of \$ [REDACTED] for less than fair market value (the value of the alleged missing or unverified money).
7. On A [REDACTED], 2022, the Department received a request for hearing on Petitioner's behalf disputing the determination of a divestment and application of the divestment penalty.
8. The hearing was the first instance when Petitioner's guardian first learned of the last four digits of the account number in question with the alleged balance of \$ [REDACTED]. No Verification Checklist (VCL) or other written document had been provided to Petitioner's guardian identifying the account or money in question prior to the hearing.

### **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.

In this case, Petitioner disputes the determination of a divestment and application of a divestment penalty. Pursuant to policy, the Department is required to verify assets at application or when information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. BEM 400 (April 2022), p. 61; BAM 130 (January 2022), p.

1. When verifications are needed, the Department must tell the client and authorized representative what is required, how to obtain it, and the due date using a DHS-3503 Verification Checklist (VCL). BAM 130, p. 3. An authorized representative is a person who applies for assistance on behalf of the client and/or otherwise acts on the client's behalf. BAM 110 (April 2022), p. 9. The authorized representative assumes all the responsibilities of the client. *Id.* Authorized representatives must be a least 18 years old, and may include guardians, spouses, or relatives outside of the group. BAM 110, p. 10.

In April 2022, Petitioner had a newly appointed guardian who had not participated in the previous two applications. In the same month of appointment, Petitioner's new guardian submitted an application as an authorized representative for MA and Retroactive MA benefits on Petitioner's behalf. Rather than requesting new information from the newly appointed guardian and authorized representative in writing detailing the accounts in question, the Department had a conversation with Petitioner's guardian who admitted difficulties with Petitioner's son. Petitioner's guardian was never given the opportunity to verify any assets in question based upon the new application or the guardian's recent appointment. Since policy requires the Department to request verification of assets at each application and because Petitioner's guardian and authorized representative was not given that opportunity, the Department erred in determining a divestment of \$4 [REDACTED] and applying a divestment penalty from January 1, 2022 through May 16, 2022.

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 a divestment totaling \$ [REDACTED] and applied a penalty from January 1, 2022 through May 16, 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. Reprocess Petitioner's [REDACTED], 2022 MA and Retroactive MA application;
2. If otherwise eligible, issue supplements to Petitioner or on her behalf for benefits not previously received; and,

3. Notify Petitioner in writing of its decision.

AMTM/cc



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**Amanda M. T. Marler**  
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 :**

**Interested Parties**

MDHHS-Wayne-82-Hearings  
BSC4-HearingDecisions  
EQADHearings  
C. George  
MOAHR

**Via-First Class Mail :**

**Petitioner**

[REDACTED], MI [REDACTED]

**Authorized Hearing Rep.**

[REDACTED], [REDACTED]