



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: January 5, 2023  
MOAHR Docket No.: 22-005184  
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 December 6, 2022, from Lansing, Michigan. The Petitioner was represented by her guardian ██████████ ██████████. The Department of Health and Human Services (Department) was represented by Megan Sterk AP Supervisor. Laurel Palermo Long Term Care Specialist also appeared and testified for the Department. Department Exhibit 1, pp. 1-278 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 ██████████ ██████████ Petitioner applied for Medicaid Long Term Care (MA-LTC).
2. On October 17, 2022, a Health Care Coverage Determination Notice was issued to Petitioner informing her that she was approved for Medicaid with a finding of divestment in the amount of \$██████████ and a divestment penalty period of 10 months and 11 days. Petitioner was also found eligible for MA for the retro months May and July 2022 but denied for the months of June and August 2022 due to excess assets (Ex. 1, pp. 20-24)
3. On ██████████ ██████████ Petitioner requested hearing disputing the finding of divestment and imposition of divestment penalty period.

4. Petitioner made cash withdrawals totaling \$ [REDACTED] and expense payments totaling \$ [REDACTED] during the lookback period that the Department requested verification of that the Petitioner could not adequately explain what the monies and payments were paid towards.
5. Petitioner's current guardian [REDACTED] [REDACTED] testified at hearing that Petitioner suffers from dementia and is unable communicate and explain how her money was spent during the lookback period. Ms. [REDACTED] also asserted at hearing that Petitioner was a victim of embezzlement and fraud by her former caregiver and that it was reasonable to conclude that Petitioner spent the large cash withdrawals she made on her regular household expenses.

### **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.

## **DEPARTMENT POLICY**

### **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.

**Note:** 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*. BEM 405

## TRANSFER OF A RESOURCE

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).
- Purchasing an asset which decreases the group's net worth and is not in the group's financial interest (divestment). BEM 405

**UNDUE  
HARDSHIP**

Waive the penalty if it creates undue hardship. Assume there is no undue hardship unless you have evidence to the contrary.

Undue hardship exists when the client's physician (M.D. or D.O.) says:

Necessary medical care is not being provided, and  
The client needs treatment for an emergency condition.

A medical emergency exists when a delay in treatment may result in the person's death or permanent impairment of the person's health.

A psychiatric emergency exists when immediate treatment is required to prevent serious injury to the person or others.  
BEM 405

**Transfers by  
Representati  
ves**

Treat transfers by any of the following as transfers by the client or spouse.

Parent for minor.

Legal guardian.

Conservator.

Court or administrative body.

Anyone acting in place of, on behalf of, at the request of or at the direction of the client or the client's spouse. BEM 405

In this case, Petitioner disposed of \$ [REDACTED] during the look back period that the Department determined to be divestment. The Department requested verifications to show how that money was spent to determine whether divestment may have occurred. Petitioner's guardian provided some bank account records and copies of checks. The Department determined that the Petitioner did not give an adequate explanation regarding how the \$ [REDACTED] was spent and made a finding of divestment.

Petitioner's current guardian, [REDACTED] [REDACTED] testified at hearing that Petitioner suffers from dementia and is unable to communicate to explain how her monies were spent during the look back period. Ms. [REDACTED] asserted that Petitioner was a victim of fraud and embezzlement at the hands of her former caregiver. Ms. [REDACTED] testified that a criminal complaint was filed with law enforcement regarding the alleged fraud perpetrated by Petitioner's former caregiver, but the status of any investigation was

unknown. Ms. [REDACTED] testified that the former caregiver destroyed records and that she currently has no access to many of the records from the look back period. Ms. [REDACTED] testified that she believes Petitioner paid many of her bills in cash and gave that as an explanation for the regular cash withdrawals from her bank account during the look back period. Ms. [REDACTED] argued that because the cash withdrawals were regular and consistent it would be reasonable to deduce that Petitioner was using the monies to pay for her regular household expenses.

Department policy requires that monies spent during the five-year lookback period must be reviewed to determine whether divestment may have occurred. BEM 405 A verification checklist was issued to Petitioner requesting verification of monies spent during the lookback period. Petitioner provided some bank account records which showed large cash withdrawals totaling \$[REDACTED] and expenses totaling \$[REDACTED] (Ex. 1, pp. 32-34, 276) Petitioner was given several opportunities to verify how these monies were spent but she was unable to do so. The Department can only make a determination based on the information and documentation provided to them. Based on the information and documentation provided to the Department the finding of divestment was proper and correct and consistent with Department policy. BEM 405 The large cash withdrawals and expense payments for a home she did not own are unusual and the Department was justified to require explanation. Petitioner's current guardian was placed in difficult circumstances due to Petitioner's health status and the lack of available information but the assumptions she argued should be made were not adequately supported by the evidence presented.

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 acted in accordance with Department policy when it determined that Petitioner divested assets and imposed divestment penalty period.

### **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED**.

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**  
Mariah Schaefer  
Allegan County DHHS  
3255 122nd Ave Ste 300  
Allegan, MI 49010  
**MDHHS-Allegan-  
Hearings@michigan.gov**

**Interested Parties**  
Allegan County DHHS  
BSC3  
D. Smith  
EQAD  
MOAHR

**Via-First Class Mail :**

**Petitioner**  
[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]

**Authorized Hearing Rep.**  
[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]