



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: April 10, 2023  
MOAHR Docket No.: 23-000371  
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 March 15, 2023, from Lansing, Michigan. The Petitioner was represented by Stacy Baragar. ██████████ ██████████ and ██████████ ██████████ also appeared and testified for the Petitioner. The Department of Health and Human Services (Department) was represented by Kellie Wagner, AP Worker. Adele Sumption Hearing Facilitator also appeared for the Department. Department Exhibit 1, pp. 1-43 was received and admitted.

**ISSUE**

Did the Department properly determine that Petitioner divested assets?

**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 ██████████ ██████████ 2022, applied for Medicaid Long Term Care (MA-LTC).
2. On November 28, 2022, a Health Care Coverage Determination Notice was sent to Petitioner informing her that she was approved for Medicaid for November 1, 2022, and ongoing with a finding of divestment of \$32,635 and divestment penalty period from November 1, 2022, through February 10, 2023.
3. On January 30, 2023, Petitioner requested hearing disputing the determination of divestment.
4. On May 20, 2022, Petitioner's husband withdrew \$3,000 for gambling.

5. On July 25, 2022, Petitioner withdrew \$10,000 to pay [REDACTED] [REDACTED] to take care of [REDACTED] [REDACTED]
6. On August 9, 2022, Petitioner paid \$4,473 for future condominium fees.
7. On August 24, 2022, Petitioner paid \$6,400 for future condominium fees.
8. On September 28, 2022, Petitioner's husband withdrew \$5,000 for gambling.
9. On October 21, 2022, Petitioner's husband gifted his 2012 Mazda 3 valued at \$3,662 to his daughter [REDACTED] [REDACTED]
10. Petitioner's daughter [REDACTED] [REDACTED] conceded at hearing that the \$5,000 withdrawal on September 28, 2022, by Petitioner's husband was divestment.

### **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 405

## Spouses Sharing a Penalty

Penalize a client if her or his spouse divests. The penalty is imposed on whichever spouse is in a penalty situation. If both spouses are in a penalty situation, the penalty period (or any remaining part) must be divided between them.

Mr. and Mrs. Brown divested themselves of assets prior to Mr. Brown entering an LTC facility and applying for Medicaid. Mr. Brown is in LTC and under a divestment penalty for 24 months. When Mrs. Brown enters the facility 6 months later, the remaining 18 months of Mr. Brown's penalty are divided between them, giving Mr. and Mrs. Brown each 9 months of the penalty still to complete. If either Mr. or Mrs. Brown dies before they complete their penalty the remainder of their penalty is transferred to their spouse.

Mr. Brown enters a LTC facility and applies for Medicaid. He is found eligible for Medicaid. During the presumed asset eligibility period Mrs. Brown transfers Mr. Brown's assets to herself and then transfers the assets to her children (the first transaction is permitted the second transaction is divestment). Mr. Brown incurs the divestment penalty. Mrs. Brown then enters the LTC facility. Mr. and Mrs. Brown divide the remainder of the incurred divestment penalty.  
BEM 405

In this case, with regard to the \$3,000 withdrawal on May 20, 2022, by [REDACTED] there is no finding of divestment. [REDACTED] gambled regularly throughout his life according to the credible testimony of [REDACTED] Presumably he did not withdraw the money on May 20, 2022, with the intention of losing all the money and in fact he likely expected to win. Petitioner's husband also received some entertainment value when he gambled. [REDACTED] did not withdraw the money and dispose of it in an effort to become eligible for MA, therefore that withdrawal is not divestment. BEM 405

With regard to the payments made on August 9, 2022, and August 24, 2022, towards future condominium fees totaling \$10,873. Those payments are divestment because there was no current obligation to pay. BEM 400

With regard to the \$10,000 payment made to [REDACTED] on July 25, 2022, the requirements were not met for a personal care or home care contract. Specifically, there was no signed doctor's statement confirming that the care was necessary to keep the community spouse in the home and there was no signed contract between Petitioner

and Mr. [REDACTED] The \$10,000 payment made to Mr. [REDACTED] is found to be divestment. BEM 405

With regard to Petitioner's husband's October 21, 2022, transfer of his 2012 Mazda 3 automobile to [REDACTED] [REDACTED] this was a transfer of an asset for less than fair market value and it was correctly found to be divestment. BEM 405

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 found that the \$10,000 payment made to [REDACTED] [REDACTED] the \$10,873 pre-payments towards future condo fees, the \$5,000 withdrawal for gambling made on September 28, 2022 and Petitioner's husband giving away his car on October 21, 2022 were divestment.

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 the \$3,000 withdrawal on May 20, 2022, by Petitioner's husband for gambling was divestment.


### **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the finding of divestment for \$10,000 payment made to [REDACTED] [REDACTED] the \$10,873 pre-payments towards future condo fees, the \$5,000 withdrawal for gambling made on September 28, 2022, and Petitioner's husband giving away his car on October 21, 2022, and **REVERSED IN PART** with respect to finding of divestment for the \$3,000 withdrawal for gambling on May 20, 2022.

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. Reduce the amount of divestment by \$3,000.
2. Recalculate the divestment penalty period.

AM/nr

  
\_\_\_\_\_  
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**  
Randall Pierson  
Ottawa County DHS  
12185 James St Suite 200  
Holland, MI 49424  
**MDHHS-Ottawa-  
Hearings@michigan.gov**

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

**Via-First Class Mail :**

**Petitioner**

██████████  
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██████████, MI ██████████

**Authorized Hearing Rep.**  
Stacey Baragar  
The Laurels of Hudsonville  
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