



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: June 8, 2023
MOAHR Docket No.: 23-001500
Agency No.: [REDACTED]
Petitioner: [REDACTED] [REDACTED]

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, a telephone hearing was held on June 1, 2023, from Lansing, Michigan. Petitioner was represented by her authorized hearing representative, [REDACTED] [REDACTED]. The Department was represented by Andrea Bowerman and Michelle Caringi.

ISSUE

Did the Department of Health and Human Services (Department) properly determine that Petitioner's eligibility for Long Term Care (LTC) benefits is 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 [REDACTED] [REDACTED] 2022, the Department received Petitioner's application for Medical Assistance (MA) and request for retroactive benefits as of August 1, 2022. Exhibit A, pp 9-17.
2. Petitioner also filed an application for long term care (LTC) with an admission to a nursing facility on September 29, 2022. Exhibit A, pp 18-29.
3. On January 17, 2023, the Department sent Petitioner a Verification Checklist (DHS-3503) requesting, among other things, copies of receipts for expenses reported along with Petitioner's declaration of assets. Exhibit A, pp 52-55.
4. Petitioner reported to the Department that she spent \$28,275 towards necessary personal care. Exhibit A, pp 36-51.

5. On February 16, 2023, the Department notified Petitioner that her Long-Term Care (LTC) benefits would be subject to a two month and 25-day divestment penalty. Exhibit A, pp 63-66.
6. On March 14, 2023, the Department received Petitioner's request for a hearing protesting the divestment penalty. Exhibit A, pp 6-8.

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.*

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; see definition in glossary.
- Is not listed under transfers that are not divestment in this item.

Department of Health and Human Services Bridges Eligibility Manual (BEM) 504 (January 1, 2023), p 1.

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, which makes the transfer a divestment, unless the services are recommended in writing by a physician and the services are performed after a notarized written contract has been executed. BEM 504, p 8.

Petitioner applied for MA, retroactive MA, and Long-Term Care (LTC) benefits. Petitioner provided the Department with verification of her countable assets and how she disposed of portions of her assets during the look back period. Some of those

expenditures were for personal care services before Petitioner was admitted into long term care. The Department determined that Petitioner spent \$28,275 on personal care services. The Department did not dispute that those expenditures were for personal care services and Petitioner's representative did not dispute that amount.

Personal care contracts/agreements shall be considered divestment unless certain requirements outlined in BEM 405 have been met. In this case, the verification of Petitioner's expenditures failed to verify that Petitioner's physician recommended these personal care services in writing and that a notarized personal care services contract had been executed before the services were provided.

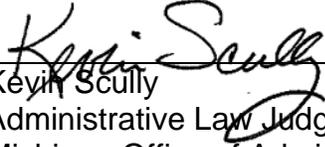
The Department then properly determined that Petitioner's long term care benefits would be subject to a two month and 25-day divestment penalty by dividing the amount of the divestment by the average monthly cost of private Long-term care in Michigan as directed by BEM 405.

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 determined that Petitioner's Long-Term Care (LTC) benefits should be subject to a divestment penalty.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

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 :

DHHS
Gary Leathorn
Sanilac County DHHS
515 South Sandusky
Sandusky, MI 48471
MDHHS-StClair-
Hearings@michigan.gov

Interested Parties
St. Clair County DHHS
BSC2
D. Smith
EQAD
MOAHR

Via-First Class Mail :

Authorized Hearing Rep.

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██████████, MI ██████████

Petitioner

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