



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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Date Mailed: June 16, 2023
MOAHR Docket No.: 23-002057
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 zoom videoconference hearing was held on May 17, 2023, from Lansing, Michigan. The Petitioner was represented by David L Shaltz, Attorney. ██████████ Co-Conservator, Co-Guardian, and son was present as an observer. The Department of Health and Human Services (Department) was represented by Geraldine Brown, Assistant Attorney General. Krista Grzeszak, Supervisor, and Brandon Kimble, Eligibility Specialist (ES), were present as witnesses for the Department.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit F and the attachments to Petitioner's brief were admitted as Exhibits A-E. Petitioner's Exhibits 1-5 were also admitted.

ISSUE

Did the Department properly determine Petitioner's eligibility for Medical Assistance (MA)?

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 December 17, 2021, Petitioner's co-conservator terminated a lease effective December 31, 2021 in order to sell the property. (Exhibit F, pp. 17-20)
2. On ██████████ 2022, an application for Long Term Care MA was submitted on Petitioner's behalf. (Exhibit F, pp. 22-29)

3. The [REDACTED] 2022 application was initially denied and a hearing was requested. Per MOAHR docket number 22-005367, the initial denial of the application was reversed. (Exhibit F, p. 2; Exhibit C; Exhibit 3)
4. The [REDACTED] 2022 application was reprocessed. (Exhibit F, p. 2)
5. March 15-16, 2022, emails between the ES and the Long-Term Care Support unit indicate the Department considered the termination of the farmland lease as a divestment. (Exhibit F, pp. 30-31)
6. On March 27, 2023, a Health Care Coverage Determination Notice was issued approving MA for Petitioner effective September 1, 2022 through December 31, 2022 with a \$1,438.00 monthly patient pay amount and from January 1, 2023 ongoing with a \$1,595.00 monthly patient pay amount. A divestment penalty was also imposed for September 1, 2022 through April 8, 2023 due to assets or income transferred for less than their fair market value. (Exhibit F, pp. 13-16)
7. On March 27, 2023, a Benefit Notice was issued stating a divestment was added to the case based on the termination of the farmland lease for a total of \$72,000.00 resulting in a penalty period of September 1, 2022 through April 8, 2023. (Exhibit 5)
8. On April 3, 2023, a hearing request was filed on Petitioner's behalf contesting the Department's determination. (Exhibit F, pp. 8-9)

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.

BEM 405 addresses MA Divestment. In part, this policy states:

Divestment results in a penalty period in MA, **not** ineligibility.

Divestment means a transfer of a resource (see *resource defined* in this item and in glossary) by a client or his spouse that are all of 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 in this item under *transfers* that are not divestment.

BEM 405, January 1, 2022, p. 1.

RESOURCE DEFINED

Resource means all the client's and spouse's assets and income. It includes all assets and all income, even countable and/or excluded assets, the individual or spouse receive. It also includes all assets and income that the individual (or spouse) were entitled to but did not receive because of action by one of the following:

- The client or spouse.
- A person (including a court or administrative body) with legal authority to act in place of or on behalf of the client or the client's spouse.
- Any person (including a court or administrative body) acting at the direction or upon the request of the client or his/her spouse.

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, January 1, 2022, pp. 1-2.

Transfers by Representatives

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, January 1, 2022, p. 3.

Regarding less than fair market value, uncompensated value, and resources returned the BEM 405 policy states:

Less than fair market value means the compensation received in return for a resource was worth less than the fair market value of the resource. That is, the amount received for the resource was less than what would have been received if the resource was offered in the open market and in an arm's length transaction (see glossary).

BEM 405, January 1, 2020, p. 6.

Uncompensated Value

The uncompensated value of a divested resource is

- The resource's cash or equity value.
- Minus any compensation received.
- The uncompensated value of a promissory note, loan, or mortgage is the outstanding balance due on the date of application.

Resources Returned

Cancel a divestment penalty if either of the following occurs before the penalty is in effect:

- All the transferred resources are returned and retained by the individual.
- Fair market value is paid for the resources.

BEM 405, January 1, 2022, p. 15.

BEM 405 also addresses transfers for another purpose:

Transfers for Another Purpose

A transfer of resources to a religious order by a member of that order in accordance with a vow of poverty are transfers for another purpose.

As explained in this item, transfers exclusively for a purpose other than to qualify or remain eligible for MA are not divestment.

Assume transfers for less than fair market value were for eligibility purposes until the client or spouse provides convincing evidence that they had no reason to believe LTC or waiver services might be needed.

BEM 405, January 1, 2022, p. 11

The Department argues that the termination of the lease of the farmland adjacent to Petitioner's homestead was a divestment similar to refusing an inheritance or giving up the right to receive pension income. However, this argument was not persuasive. Petitioner had an option to lease or not lease his farmland. This is not the same as the giving up the right to receive an inheritance or pension income. In divestments based on refusing an inheritance or giving away pension income, the individual does not receive anything of fair market value in return for refusing/giving away the resource. The lease

payment was the fair market value for the right to use the farmland. In other words, leasing the farmland required Petitioner to give up the right to use his land during the lease period. Petitioner chose to stop leasing the land, thereby retaining the right to use the land himself. The December 17, 2021 lease termination letter indicates the termination was to allow for the sale of the property. (Exhibit F, p. 17). Further, the Department acknowledged that it cannot force someone to lease a property they do not want to. Accordingly, the Department's divestment determination was not in accordance with the above cited BEM 405 policy.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's eligibility for MA.

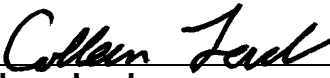
DECISION AND ORDER

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. Redetermine Petitioner's eligibility for the [REDACTED] 2022 MA application in accordance with Department policy.

CL/ml



Colleen Lack
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:

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