



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: June 29, 2023
MOAHR Docket No.: 23-002726
Agency No.: ██████████
Petitioner: ██████ ██████

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 14, 2023, from Lansing, Michigan. Petitioner was represented by her authorized hearing representative Michael Riggs and Heidi Riggs. The Department was represented by Kimberly Reed.

ISSUE

Did the Department of Health and Human Services (Department) properly determine that Petitioner was eligible for Medical Assistance (MA) with a divestment penalty applied towards her Long-Term Care (LTC)?

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 ██████████ ██████████ 2023, the Department received Petitioner's application for Medical Assistance (MA). Exhibit A, pp 34-39.
2. Petitioner had executed a Quit Claim Deed dated June 14, 2018, transferring real property with a fair market value of \$136,800 from herself to herself and her son as joint tenants. Exhibit A, pp 40-46.
3. On April 13, 2023, the Department notified Respondent that her Long-Term Care (LTC) benefits would be subject to a divestment from March 1, 2023, through September 26, 2023, due to a \$68,400 divestment. Exhibit A, pp 18-25.
4. On April 28, 2023, the Department received Petitioner's request for a hearing protesting the Department's determination of a divestment penalty against Petitioner's Long-Term Care (LTC) benefits. Exhibit A, pp 4-17.

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 within the look back period, which is the 60 months before entering into long term care. A divestment is a transfer of a resource for less than fair market value. Transfers of resources that are excluded or not countable assets may be divestment. Transfers that are not divestment are outlined in Department policy. Department of Health and Human Services Bridges Eligibility Manual (BEM) 405 (January 1, 2023), p 1.

When a client jointly owns a resource with another person, any action by the client that reduces or eliminates the client's ownership or control is considered a transfer by the client. BEM 405, pp 3-4.

The Department determines the length of a divestment period by dividing the amount of resources that were divested by the average cost for long term care. BEM 405, pp 12-13.

In this case, Petitioner was the owner of real property, and she had transferred a half interest in that real property to her son by way of a quit claim deed in the 60 months before entering into long term care. No evidence was presented on the record that Petitioner received any compensation in exchange for this transfer of property rights to the real property. It was not disputed that the fair market value of the real property was \$136,800. The Department determined that Petitioner's LTC benefits would be subject to a 6 month and 26-day divestment period by dividing the fair market value of the real property interest that Petitioner transferred by the average monthly cost of long-term care, which is \$9,939 in 2023. BEM 405, p 13.

Petitioner's representative testified that it was not Petitioner's intent to dispose of assets in order to qualify for Medicaid and the resource that was transferred was an excluded asset as Petitioner's primary residence.

However, policy does not exclude transfers of excluded assets from consideration of whether there has been a divestment.

Petitioner's representative testified that if Petitioner had received more information during the application period that she would have made different choices and the divestment penalty could have been avoided. Further, upon discovering the divestment penalty, full ownership of the asset was returned to Petitioner, thus ending the divestment.


However, the Department was under no duty to provide Petitioner with estate planning advice. Further, the Department determination of Petitioner's eligibility for benefits was made in accordance with Department policy and there is no entitlement to anything further.

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 the divestment penalty that was applied towards Petitioner's Long-Term Care (LTC) benefits.

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
Kimberly Reed
Montcalm County DHHS
609 North State Street
Stanton, MI 48888
**MDHHS-Montcalm-
Hearings@michigan.gov**

Interested Parties
Montcalm 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]