



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: November 21, 2023
MOAHR Docket No.: 23-005157
Agency No.: [REDACTED]
Petitioner: [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 October 25, 2023, from Lansing, Michigan. Petitioner was represented by her attorney David L. Carrier. The Department was represented by Assistant Attorneys General Geraldine A. Brown and Kelly A. Carter. Adel Sumption and Kelly Wagner testified for the Department.

ISSUE

Did the Department of Health and Human Services (Department) properly determine Petitioner's eligibility for long-term care Medical Assistance (MA) should be 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 June [REDACTED] 2023, the Department received Petitioner's application for Medical Assistance (MA).
2. Petitioner entered into long-term care on August [REDACTED] 2023. Exhibit A, p 65.
3. Petitioner divested assets in the amount of \$[REDACTED] Exhibit A, p 68.
4. On August [REDACTED] 2023, the Department notified Petitioner that she was eligible for Medical Assistance (MA) with a divestment penalty to be applied towards her long-term care services from August 1, 2023, through May 8, 2024. Exhibit A, pp 11-13.
5. On August 23, 2023, the Department received Petitioner's request for a hearing protesting her eligibility for Medical Assistance (MA). Exhibit A, pp 7-10.

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 results in a penalty period in MA, not ineligibility. 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 within a specified time, include transfers for less than fair market value, and are not excluded by Department policy. Department of Health and Human Services Bridges Eligibility Manual (BEM) 405 (January 1, 2023), p 1.

In this case, Petitioner does not dispute that assets totaling \$██████████ were divested during the 60-month look-back period. Petitioner argues that the Department improperly applied a divestment penalty and failed to apply policy in effect at the time Petitioner applied for benefits.

The Department had previously changed the way MA benefits could be used to pay for long-term care benefits and individuals enrolled in Program of All-Inclusive Care for the Elderly (PACE) were not subject to divestment penalties. Later, the Department reversed this policy change, but the reversal was put on hold during the public health emergency. With the public health emergency concluded, individuals enrolled in PACE were once again subject to divestment penalties effective August 1, 2023.

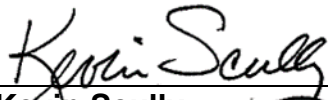
Petitioner applied for MA benefits on June █████ 2023, and entered into long term care on August █ 2023, the effective date that divestment penalties apply to PACE enrollees. Department policy in BEM 405 allows for changes to the divestment penalty period once determined, and the hearing record supports a finding that the Department was acting in accordance with policy in this case when determining the divestment penalty as of the date Petitioner entered into long-term care.

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 benefits should be subject to a divestment penalty.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/dm



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 :

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