



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
SUZANNE SONNEBORN  
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA  
ACTING DIRECTOR

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██████████, MI ██████████

Date Mailed: December 12, 2023  
MOAHR Docket No.: 23-006427  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**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 December 6, 2023, via conference line. Petitioner was represented by Drew Carnwath. Also present was Petitioner's Authorized Hearing Representatives/Guardians, ██████████ and ██████████. The Department of Health and Human Services (Department) was represented by Caitlin Dodge, Family Independence manager and Nina Kossak, Eligibility Specialist.

**ISSUE**

Did the Department properly impose a Medical Assistance (MA) divestment penalty from August 1, 2023, through August 19, 2023?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner entered Long Term Care (LTC) in 2019.
2. Petitioner submitted an application for MA benefits.
3. On May 19, 2022, the Department sent Petitioner notice that she was approved for MA benefits subject to a divestment penalty period of June 1, 2022, through November 5, 2022, based on the divestment of \$49,400.

4. On November 17, 2022, Petitioner requested that her MA benefit case be closed.
5. Effective December 1, 2022, Petitioner's MA benefit case was closed.
6. On [REDACTED], 2022, Petitioner submitted a new application for MA benefits.
7. Effective January 1, 2023, Petitioner began receiving MA benefits without being subject to a divestment penalty.
8. On June 23, 2023, the Department sent Petitioner a Benefit Notice informing her that due to an agency error, she was subject to a divestment penalty period of August 1, 2023, through August 19, 2023, in addition to the penalty period she served from June 1, 2022, through November 5, 2022.
9. On September 18, 2023, Petitioner's representative submitted a request for hearing disputing the divestment penalty period of August 1, 2023, through August 19, 2023.

### **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.

In this case, Petitioner entered LTC in 2019, and submitted an application for MA benefits in 2022. The Department discovered that Petitioner had transferred \$49,400 in cash assets to her brothers, [REDACTED] and [REDACTED] on March 31, 2022 (Exhibit A, p. 13). The Department determined that the transfer was divestment. The Department testified that it calculated Petitioner's divestment penalty period of 5 months and 5 days, to be served during the period of June 1, 2022, through November 5, 2022, using a baseline date of 2021. The Department testified the Department erred when calculating Petitioner's original divestment penalty period, as the baseline date should have been 2019, when Petitioner entered LTC, which would result in a divestment penalty period of 5 months and 24 days. The Department discovered the error when processing Petitioner's case in 2023. As a result, the Department issued a Benefit Notice on June 23, 2023, informing Petitioner that she was subject to a divestment penalty period of August 1, 2023, through August 19, 2023, for the remaining 19 days, as a result of using the 2019 baseline date.

The Department computes the divestment penalty period on the total uncompensated value of the resources divested. BEM 405 (January 2023), p. 12. The Department divides the uncompensated value by the average monthly private LTC cost in Michigan for the client's baseline date. BEM 405, p. 13. This gives the number of full months for the penalty period. BEM 405, p. 13. The Department then multiplies the fraction remaining by 30 to determine the number of days for the penalty period in the remaining partial month. BEM 405, p. 13. A person's baseline date is the first date that the client was eligible for Medicaid and one of the following: (i) in LTC; (ii) approved for the waiver; (iii) eligible for Home Health services; or (iv) eligible for Home Help services. BEM 405, p. 6. The average LTC cost for a baseline date in the calendar year 2021 was \$9,560 and in 2019 it was \$8,469. BEM 405, pp. 13-14.

Policy states that a person's baseline date is the date the client was in LTC **and** eligible for MA. BEM 405, p. 13 (emphasis added). Additionally, Federal regulations require that the State plan must provide that if an institutionalized individual or the spouse of such an individual disposes of assets for less than fair market value on or after the look-back date, the individual is ineligible for medical assistance for services during the period beginning on the date specified within Federal regulations. 42 USC 1396p(c)(1)(A). With respect to an institutionalized individual, the number of months of ineligibility under Federal regulations for an individual shall be equal to: (I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date divided by (II) the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) **at the time of application**. 42 USC 1396p(c)(1)(E) (emphasis added).

At the hearing, the Department testified that Petitioner entered LTC in 2019, requiring that Petitioner's baseline date divisor to be that of the average cost of LTC care in 2019. However, Federal and Department policy requires that the divisor rate is based on the year in which the institutionalized individual entered LTC, and an MA eligibility determination was completed at the time of application. The Department did not provide any evidence that Petitioner completed an MA application or was determined to be eligible for MA in 2019, only that she entered LTC in 2019. Therefore, the Department failed to establish that it properly used 2019 as Petitioner's baseline date divisor. As it follows, the Department failed to establish that it properly imposed the additional 19-day divestment penalty period of August 1, 2023, through August 19, 2023.

### **DECISION AND ORDER**

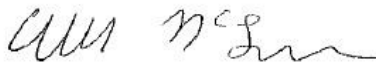
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it imposed a divestment penalty period to Petitioner's MA case from August 1, 2023, through August 19, 2023.

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. Remove the penalty period for Petitioner's MA case from August 1, 2023, through August 19, 2023;
2. Supplement Petitioner and/or her provider for any eligible missed MA LTC benefits in accordance with Department policy; and
3. Notify Petitioner and her attorney in writing of its decision.

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**Ellen McLemore**  
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**

Linda Gooden  
Oakland County Southfield District III  
25620 W. 8 Mile Rd  
Southfield, MI 48033  
**MDHHS-Oakland-6303-  
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**Interested Parties**

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**Petitioner**

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