



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: January 12, 2024
MOAHR Docket No.: 23-008447
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

On November 3, 2023, Petitioner, [REDACTED] requested a hearing to dispute the Department's decision to impose a Medical Assistance (MA) divestment penalty. As a result, a hearing was scheduled to be held on January 11, 2024, pursuant to MCL 400.9; 42 CFR 431.200 to 431.250; and Mich Admin Code, R 792.11002. Petitioner's attorney, Andrew Luoma, appeared on Petitioner's behalf. Additionally, [REDACTED] appeared as a representative for Petitioner. Respondent, Department of Health and Human Services (Department), had Jesse Hansen, Assistance Payments Worker, and Farah Erickson, Family Independence Manager, appear as its representatives. Neither party had any additional witnesses.

Two exhibits were admitted into evidence during the hearing. A 48-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A, and a 20-page packet of documents provided by Petitioner was admitted collectively as Petitioner's Exhibit 1.

ISSUE

Did the Department properly determine Petitioner's MA 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. In [REDACTED] 2022, Petitioner applied for LTC-MA from the Department, and Petitioner reported that she gifted \$19,900.00 within the five years before submitting her application.

2. On April 8, 2022, the Department mailed a health care coverage determination notice to Petitioner to notify her that she was eligible for full coverage MA effective February 1, 2022. The determination contained a paragraph that stated, "Medicaid will not pay for your long-term care services from [] through []. This is because you or your spouse transferred assets or income for less than their fair market value. . . ."
3. Petitioner was anticipating a divestment penalty due to the \$19,900.00 that she gifted prior to her application. When Petitioner received the April 8, 2022, determination, Petitioner noticed that the divestment penalty months were missing from the determination, so Petitioner contacted the Department for additional information.
4. On April 14, 2022, the Department replied to Petitioner. The Department stated that the divestment resulted in a two-month penalty.
5. On April 26, 2022, Petitioner paid for the first two months of her long-term care out of her pocket. Petitioner paid for February 2022 and March 2022.
6. On October 3, 2023, the Department mailed a new health care coverage determination notice to Petitioner to notify her that she was subject to a two-month divestment penalty. The Department sent the notice because the original notice that was sent did not contain the dates of the penalty. The Department notified Petitioner that she was subject to a two-month divestment penalty from November 2023 through December 2023.
7. Petitioner requested a hearing to dispute the Department's decision.

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 administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, the Department approved Petitioner for LTC-MA effective February 1, 2022. Petitioner was subject to a two-month divestment penalty, and Petitioner paid for her long-term care from February 2022 through March 2022 out of her pocket to serve the penalty. Subsequently, the Department sent Petitioner notice that she had to serve

her two-month penalty from November 2023 through December 2023. The Department sent this notice because the Department determined that it did not properly notify Petitioner of the divestment penalty when she applied.

When a client is subject to a divestment penalty, the divestment penalty starts on the date which the client is eligible for MA and would otherwise be receiving institutional level care (LTC, MIChoice wavier, home help, or home health services), and is not already part of a penalty period. BEM 541 (January 1, 2023), p. 14. and 42 USC 1396p(c)(D)(ii). Petitioner was subject to a divestment penalty at the time of her application, and the Department was aware of the divestment at the time, so Petitioner's divestment penalty began the first day that Petitioner was eligible for MA. Petitioner was first eligible for MA on February 1, 2022, and Petitioner was subject to a two-month penalty, so Petitioner's divestment penalty was from February 2022 through March 2022. Although the Department did not state the divestment months on its original notice, Petitioner contacted the Department to get clarification on the divestment months, and the Department advised that the divestment penalty was two months. Thus, Petitioner had notice of the divestment penalty before Petitioner paid for her long-term care. Therefore, Petitioner properly served her divestment penalty when she paid for her long-term care from February 2022 through March 2022.

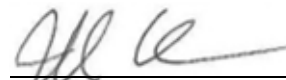
Since Petitioner properly served her divestment penalty from February 2022 through March 2022, the Department should not have subjected Petitioner to a divestment penalty from November 2023 through December 2023. Thus, the Department did not properly determine Petitioner's divestment penalty when the Department determined that Petitioner was subject to divestment penalty from November 2023 through December 2023. Therefore, the Department's decision is reversed.

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 properly determine Petitioner's divestment penalty.

IT IS ORDERED the Department's decision is **REVERSED**. The Department shall correct the dates of Petitioner's divestment penalty to February 2022 through March 2022, and the Department shall record that Petitioner's divestment penalty has been served. The Department shall begin to implement this decision within 10 days of the date of mailing of this decision and order.

JK/ml



Jeffrey Kemm
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
Gina Goss
Iron County DHHS
337 Brady Avenue
Caspian, MI 49915
MDHHS-906WestHearings@michigan.gov

Interested Parties

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Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Via First Class Mail:

Petitioner

[REDACTED]
MI [REDACTED]