



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
DIRECTOR

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Date Mailed: April 12, 2024
MOAHR Docket No.: 24-000913
Agency No.: ██████████
Petitioner: ██████ ██████

ADMINISTRATIVE LAW JUDGE: Kevin Scully

ORDER OF DISMISSAL
FOR LACK OF JURISDICTION

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 April 3, 2024, from Lansing, Michigan. Petitioner was represented by ██████████ ██████████. The Department was represented by Megan Sterk and Laurel Palermo.

ISSUE

Did the Department of Health and Human Services (Department) properly determined that a divestment penalty should apply against Petitioner's Long-Term Care (LTC) benefits?

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 █ 2022, the Department received Petitioner's application for Long Term Care (LTC) Medical Assistance (MA). Exhibit A, p 94.
2. On May █ 2023, the Department sent Petitioner a Verification Checklist (DHS-3503) requesting verification of a prepaid funeral contract. Exhibit A, p 6.
3. On May █ 2023, the Department sent Petitioner a Verification Checklist (DHS-3503) requesting verification of Petitioner's available assets and her expenditures over the previous 60 months. Exhibit A, pp 8-9.
4. The Department determined that Petitioner divested \$██████████ of her available assets and that a 1 year 3 month 10 day divestment penalty would apply against her Long-Term Care (LTC) benefits. Exhibit A, pp 12-15.

5. On June █ 2023, the Department notified Petitioner that Petitioner was eligible for Medical Assistance (MA) but that the Department would not cover Long Term Care (LTC) expenses due to a divestment penalty from March 23, 2023, through July 2, 2024. Exhibit A, p 88.
6. On January 25, 2024, the Department received Petitioner's request for a hearing protesting the divestment penalty that had been applied towards Petitioner's Long-Term Care (LTC) benefits. Exhibit A, pp 3-5.

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.*

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits, or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service.

Department of Human Services Bridges Administrative Manual (BAM) 600 (February 1, 2024), p 5.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days. Department of Human Services Bridges Administrative Manual (BAM) 600 (February 1, 2024), pp 6-7.

On December █ 2022, the Department received Petitioner's request for Long Term Care (LTC) benefits. On June █ 2023, the Department notified Petitioner that Long Term Care (LTC) expenses would not be covered during a divestment penalty from March 23, 2023, through July 2, 2024. The Department's notice instructs Petitioner that in order to appeal the determination of eligibility, a request for a hearing needed to be received by the Department by July 31, 2023.

On January 25, 2024, the Department received Petitioner's request for a hearing protesting the divestment penalty. Petitioner's request for a hearing is untimely with respect to the Department's determination of a 1 year 3 month 10 day divestment penalty. Therefore, Petitioner is no longer entitled to an administrative hearing protesting the Department's finding of a divestment penalty.

However, in the alternative, if Petitioner is entitled to an administrative hearing, she has failed to establish her eligibility for Long Term Care (LTC) benefits during the divestment penalty.

Divestment means a transfer of a resource by a client or his spouse that is within a specified time, for less than fair market value, and not excluded by policy. Divestment results in a penalty period where the client's expenses for long term care (LTC) services, home and community-based services, home help, and home health are not covered by the client's Medical Assistance (MA) benefits. Department of Human Services Bridges Eligibility Manual (BEM) 405 (January 1, 2015), p 1.

The Department requested verification of Petitioner's countable assets and how those assets were disposed of during the 60 months before Petitioner entered into long term care. Banking statements were provided to the Department, and these statements show expenditures during the relevant period showing that \$█ had been transferred from Petitioner's available assets. Petitioner failed to provide verification that these transfers did not meet the Department's definition of divestment. Therefore, Petitioner has failed to establish that the transfers of her available assets were not divestment.

Petitioner's representative credibly testified that verification of Petitioner's financial records was provided to the Department in a timely manner.


However, the issue is not whether Petitioner provided the copies of bank statements and cancelled checks but whether those documents establish that the transfers of Petitioner's available assets are excluded from divestment by Department policy. The evidence does not support a finding that those transfers should be excluded.

The hearing record supports a finding that Petitioner's request for an administrative hearing is untimely with respect to the relief that she is requesting. Therefore, Michigan Office of Administrative Hearings and Rules (MOAHR) no longer has jurisdiction to hear or issue a decision with respect to Petitioner's grievance.

Petitioner's hearing request is therefore **DISMISSED** for lack of jurisdiction.

IT IS SO ORDERED.

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 :

DHHS
Megan Sterk
Allegan County DHHS
**MDHHS-Allegan-
Hearings@michigan.gov**

SchaeferM

EQADHearings

BSC3HearingDecisions

MOAHR

Via-First Class Mail :

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]