



GRETCHEN WHITMER  
GOVERNOR

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

MARLON BROWN  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: May 24, 2024  
MOAHR Docket No.: 24-002292  
Agency No.: [REDACTED]  
Petitioner: [REDACTED] [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 April 30, 2024, from Lansing, Michigan. Petitioner was represented by his attorney Amy Schultz. The Department was represented by Assistant Attorney Generals Joseph A. Ortiz and Scott R. Rothermel. Natalie Hurdman and Carly Ostlund testified on behalf of the Department.

### **ISSUE**

Did the Department of Health and Human Services (Department) properly determine the divestment penalty that was applied towards Petitioner's Long Term Care (LTC) Medical Assistance (MA)?

### **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 April [REDACTED] 2023, Petitioner entered into long term care and the Department received his request for Long Term Care (LTC) Medical Assistance (MA). Exhibit A, p 6.
2. The Department determined that Petitioner had divested assets with a value of \$ [REDACTED] and that a 2 month divestment penalty would be applied against Petitioner's Long Term Care (LTC). Exhibit A, p 18.
3. On January [REDACTED] 2024, the Department notified Petitioner that he was eligible for Medical Assistance (MA) as of November 1, 2023, and that a divestment would be applied against his benefits from January 1, 2024, through February 29, 2024. Exhibit A, pp 29-30.

4. On February 22, 2024, the Department received Petitioner's request for a hearing protesting the start date of the divestment penalty. 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.*

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 penalty period starts on the date which the individual is eligible for Medicaid and would otherwise be receiving institutional level care and is not already part of a penalty period. Timely notice must be given to LTC recipients and waiver recipients before actually applying the penalty. Adequate notice must be given to new applicants. BEM 405, pp 14-15.

An adequate notice is a written notice sent to the client at the same time an action takes effect (not pended). Adequate notice is given at case open with a divestment penalty. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (November 1, 2023), pp 3-4.

The amount of available assets transferred by Petitioner is not in dispute in this case, or that the divestment penalty was incorrectly applied from January 1, 2024, through February 29, 2024, with that eligibility determination being certified on January 25, 2024. In an attempt to change the divestment penalty period, Petitioner's caseworker filed a help desk ticket, but was unable to change Petitioner's benefits without giving Petitioner timely notice of the change.

The Department determined that Petitioner was eligible for MA benefits effective November 1, 2023, and BEM 405 requires the Department begin a divestment penalty on the date he became eligible for MA. No evidence was presented on the record that the failure to begin the divestment penalty on the date Petitioner became eligible for MA was

due to his failure to provide the Department with verification of asset transfers that were later found to be divestment. Adequate notice of a revision to the divestment penalty is appropriate in this case as directed by BAM 220.

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 applied a divestment penalty against Petitioner's Long Term Care (LTC) Medical Assistance (MA) and failed to correct the start of that penalty to begin on the date Petitioner became eligible for Medical Assistance (MA).


### **DECISION AND ORDER**

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. The Department shall initiate the process to impose a two month divestment penalty starting on November 1, 2023.
2. The Department shall provide the Petitioner and his attorney with written notice of the application of the divestment penalty date as required by this Hearing Decision.

KS/dm

  
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**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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