



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: March 15, 2024  
MOAHR Docket No.: 23-009552  
Agency No.: ██████████  
Petitioner: ██████ ██████

**ADMINISTRATIVE LAW JUDGE: Colleen Lack**

**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 February 15, 2024, from Lansing, Michigan. The Petitioner was represented by ██████ ██████ Authorized Hearing Representative (AHR). The Department of Health and Human Services (Department) was represented by Megan Sterk, Assistance Payments Supervisor (APS), and Laurel Palermo, Long Term Care (LTC) Specialist.

During the hearing proceeding, the Department’s Hearing Summary packet was admitted as Exhibit A, pp. 1-74, and the additional documentation submitted on Petitioner’s behalf was admitted as Exhibit 1, pp. 1-52.

**ISSUE**

Did the Department properly determine Petitioner’s eligibility for 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 August ██████ 2023, an application for LTC MA was submitted for Petitioner and one month of retroactive coverage was requested. (Exhibit A, pp. 5-11)
2. Between August 28, 2023 and October 10, 2023, four Verification Checklists were issued requesting multiple verifications including documentation from the sale of the home. (Exhibit A, pp. 12-19)

3. It was reported that there was no appraisal completed at the time of sale and there was no realtor's statement provided at the time of sale. (Exhibit A, p. 1 and 34)
4. The Department utilized the State Equalized Value (SEV) to determine the fair market value of the home. (Exhibit A, pp. 1 and 32-33)
5. The Department determined divestment occurred in the amount of \$ [REDACTED] which included the sale of the home and numerous other transactions. (Exhibit A, p. 1 and 19-67)
6. On December [REDACTED] 2023, a Health Care Coverage Determination Notice was issued stating MA was approved as of August 1, 2023 with a divestment penalty from August 1, 2023 to January 4, 2024. MA was denied for the month of July 2023 due to assets in excess of program limits. (Exhibit A, pp. 69-72)
7. On December 19, 2023, Petitioner filed a hearing request contesting the Department's determination, (Exhibit A, pp. 3-4)

### 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.

BEM 405 addresses MA Divestment. In part, this policy states:

Divestment results in a penalty period in MA, **not** ineligibility.

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Divestment means a transfer of a resource (see *resource defined* in this item and in glossary) by a client or his spouse that are all of the following:

- Is within a specified time; see *look back period* in this item.
- Is a transfer for *less than fair market value*; see definition in glossary.
- Is not listed in this item under *transfers* that are not divestment.

## **TRANSFER OF A RESOURCE**

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. **Not** all transfers are divestment. Examples of transfers include:

- Selling an asset for fair market value (not divestment).
- Giving an asset away (divestment).
- Refusing an inheritance (divestment).
- Payments from a **MEDICAID TRUST** that are **not** to, or for the benefit of, the person or his spouse; see BEM 401 (divestment).
- Putting assets or income in a trust; see BEM 401.
- Giving up the **right** to receive income such as having pension payments made to someone else (divestment).
- Giving away a lump sum or accumulated benefit (divestment).
- Buying an annuity that is not actuarially sound (divestment).
- Giving away a vehicle (divestment).
- Putting assets or income into a Limited Liability Company (LLC)
- Purchasing an asset which decreases the group's net worth and is not in the group's financial interest (divestment)

BEM 405, January 1, 2023, pp. 1-2.

## **Transfers by Representatives**

Treat transfers by any of the following as transfers by the client or spouse.

- Parent for minor.
- Legal guardian.
- Conservator.
- Court or administrative body.

- Anyone acting in place of, on behalf of, at the request of or at the direction of the client or the client's spouse.

BEM 405, January 1, 2023, p. 3.

The look back period is 60 months prior to the baseline date. A person's baseline date is the first date that the client was eligible for Medicaid and one of the following: in LTC; approved for the waiver, see BEM 106; eligible for Home Health services; or eligible for Home Help services. BEM 405, January 1, 2023, pp. 5-6.

Regarding less than fair market value, the BEM 405 policy states:

Less than fair market value means the compensation received in return for a resource was worth less than the fair market value of the resource. That is, the amount received for the resource was less than what would have been received if the resource was offered in the open market and in an arm's length transaction (see glossary).

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Relatives can be paid for providing services; however, assume services were provided for free when no payment was made at the time services were provided. A client can rebut this presumption by providing tangible evidence that a payment obligation existed at the time the service was provided (for example a written agreement signed at the time services were first provided). The policy in Bridges Administrative Manual (BAM) 130 allowing use of best available information or best judgment as verification does not apply.

BEM 405, January 1, 2023, pp. 6-7.

Acceptable verification sources for real property are:

- Deed, mortgage, purchase agreement or contract.
- State Equalized Value (SEV) on current property tax records multiplied by two.
- Attorney or court records.
- County records.
- Statement of real estate agent or financial institution.

BEM 400, July 1, 2023, p. 65.

## **UNDUE HARDSHIP**

Waive the penalty if it creates undue hardship. Assume there is no undue hardship unless you have evidence to the contrary.

Undue hardship exists when the client's physician (M.D. or D.O.) says:

- Necessary medical care is not being provided, and
- The client needs treatment for an emergency condition.

A medical emergency exists when a delay in treatment may result in the person's death or permanent impairment of the person's health.

A psychiatric emergency exists when immediate treatment is required to prevent serious injury to the person or others.

See BEM 100, Policy Exception Request Procedure.

In this case, the hearing request indicated Petitioner is requesting revision of the divestment penalty as there are receipts for some of the transactions included in the divestment penalty.

BEM 405, January 1, 2023, p. 16.

The Department properly requested documentation from the sale of the home. Between August 28, 2023 and October 10, 2023, four Verification Checklists were issued requesting multiple verifications including documentation from the sale of the home. (Exhibit A, pp. 12-19). It was reported that there was no appraisal completed at the time of sale and there was no realtor's statement provided at the time of sale. (Exhibit A, p. 1 and 34). Therefore, the Department utilized the SEV to determine the fair market value of the home. (Exhibit A, pp. 1 and 32-33). Petitioner's AHR indicated that the home could not have been sold for fair market value amount the Department determined. Petitioner provided documentation that the home was unlivable and Petitioner was not allowed to return there. An Adult Services Specialist with the Department was involved at the time and photographs were provided. A statement from a realtor dated September 14, 2023, was provided stating the home was in total blight and the only value was the lot itself, pictures were attached. The realtor stated the sale price of \$60,000.00 was fair market value at the time of the sale. (Exhibit A, p. 4; Exhibit 1, pp. 5-42). The Department noted that the realtor statement was not from the time of the sale in 2019. (LTC Specialist Testimony). However, the above cited BEM 400 policy does not specify the timeframe for a statement of real estate agent or financial institution. It is also noted that while the notes to the verification checklists indicate an appraisal at the time of home sale was requested, it does not appear that the verification checklists indicated a realtor statement could be provided as an acceptable verification. (Exhibit A, pp. 12-19)

The Department indicated that other transactions, such as two pairs of shoes in different sizes, the recliner from Art Van, artwork, and a light were considered divestment. The invoice for the recliner from Art Van indicated a different purchaser and delivery address from Petitioner. Additionally, at the time of the determination, the Department did not have the pictures showing these items were with Petitioner at the LTC facility. Regarding the shoes, there are now receipts showing one pair was returned. The Department indicated

it could look at those types of expenses again. (LTC Specialist Testimony; Exhibit 1, pp. 43-52). While it is clear the Department attempted to gather all relevant verifications by issuing multiple verification checklists, it does not appear that the Department had asked for additional documentation to explain these types of expenses, such as if these items are with Petitioner at the LTC facility. Accordingly, it would be appropriate to re-consider the divestment determination with the new documentation that has been submitted.

Petitioner's AHR also asked about the criteria for undue hardship referenced in BEM 405 policy. As indicated in the above cited policy, this could only be considered if necessary medical care was not being provided and Petitioner needed treatment for an emergency condition.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's eligibility for MA.

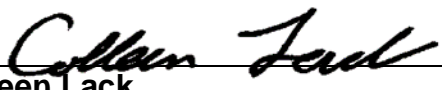
### **DECISION AND ORDER**

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. Re-determine Petitioner's eligibility for MA in accordance with Department policy, which would include consideration of the additional verifications submitted for this case.

CL/dm

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

**SchaferM**

**EQADHearings**

**BSC3HearingDecisions**

**MOAHR**

**Via-First Class Mail :**

**Petitioner**  
[REDACTED]  
[REDACTED]  
[REDACTED]  
**Authorized Hearing Rep.**  
[REDACTED]  
[REDACTED]  
[REDACTED]