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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: October 31, 2022
MOAHR Docket No.: 22-003690
Agency No.: ██████████
Petitioner: ██████████

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 an adjournment was granted on September 14, 2022, a telephone hearing was held on October 4, 2022, from Lansing, Michigan. Petitioner was represented by his attorneys Erica Payne and Jacob Spear. Michelle Kovachich appeared as a witness for Petitioner. The Department was represented by Assistance Attorney General Chantal B. Fennessey. Denise Johnston and Denise Laessig appeared as witnesses on behalf of the Department.

ISSUE

Did the Department of Health and Human Services (Department) properly determine that an ██████████ divestment would be applied towards Petitioner's eligibility for long term care 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 ██████████ 2022, the Department received Petitioner's application for long term care Medical Assistance (MA). Exhibit A, pp 12-15.
2. Petitioner had been admitted to long term care on ██████████ 2022. Exhibit A, p 16.
3. Petitioner transferred ██████████ with a check dated July 18, 2022. Exhibit A, p 20.
4. On August 5, 2022, the Department received a summary of personal care providers that provided personal care services to Petitioner. Exhibit A, p 21.

5. Canceled checks Petitioner submitted to the Department show that Petitioner transferred ██████ to 12 home care workers in the 60-month period before Petitioner was admitted to long term care. Exhibit A, pp 22-43.
6. The Department determined that Petitioner had divested assets totaling ██████ and that her long term care Medical Assistance (MA) would be subject to an 8-month 4-day divestment penalty. Exhibit A, p 19.
7. On August 16, 2022, the Department notified Petitioner that she was eligible for Medical Assistance (MA) as of July 1, 2022, with a \$9,820 monthly patient pay amount. Exhibit A, p 8.
8. On August 16, 2022, the Department also notified Petitioner her eligibility for Medical Assistance (MA) would be subject to a divestment penalty from July 1, 2022, through March 4, 2023. Exhibit A, p 8.
9. On August 19, 2022, the Department received Petitioner's request for a hearing protesting the Department's determination of her eligibility for long term care Medical Assistance (MA). Exhibit A, pp 5-7

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 60 months of the baseline date for less than fair market value that is not excluded by policy. Divestment is a type of transfer of resources and not an amount of resources transferred. Department of Human Services Bridges Eligibility Manual (BEM) 405 (January 1, 2022), pp 1-6.

Personal Care Contract means a contract/agreement that provides health care monitoring, medical treatment, securing hospitalization, visitation, entertainment, travel/transportation, financial management, shopping, home help or other assistance with activities of daily living. All Personal Care and Home Care contracts/agreements, regardless of whether between a client and a relative or a client and a non-relative, must be considered and evaluated for divestment. BEM 405, pp 7-8.

Personal Care and Home Care contracts/agreements shall be considered a transfer for less than fair market value unless the agreement meets all the following:

The services must be performed after a written legal contract/agreement has been executed between the client and the provider. The contract/agreement must be dated, and the signatures must be notarized. The services are not paid for until the services have been provided (there can be no prospective payment for future expenses or services); and

At the time the services are received, the client cannot be residing in a nursing facility, adult foster care home (licensed or unlicensed), institution for mental diseases, inpatient hospital, intermediate care facility for individuals with intellectual disabilities or be eligible for home and community-based waiver, home health or home help; and

At the time services are received, the services must have been recommended in writing and signed by the client's physician as necessary to prevent the transfer of the client to a residential care or nursing facility. Such services cannot include the provision of companionship; and

The contract/agreement must be signed by the client or legally authorized representative, such as an agent under a power of attorney, guardian, or conservator. If the agreement is signed by a representative, that representative cannot be the provider or beneficiary of the contract/agreement.

MDHHS will verify the contract/agreement by reviewing the written instrument between the client and the provider which must show the type, frequency and duration of such services being provided to the client and the amount of consideration (money or property) being received by the provider, or in accordance with a service plan approved by MDHHS.

BEM 405, p 8.

On [REDACTED] 2022, Petitioner was admitted to long term care, and on [REDACTED] 2022, the Department received her application for long term care assistance. On August 16, 2022, the Department notified Petitioner that she was eligible for long term care benefits, but that those benefits would be subject to a divestment penalty from July 1, 2022, through March 4, 2023.

Based on the information submitted to the Department by Petitioner, the Department determined that during the 60 months before Petitioner entered into long term care, that

Petitioner had transferred available assets with a value of [REDACTED]. Based on a long-term care cost of \$9,880 per month, the Department determined that an 8-month 4-day divestment penalty would be applied as directed by BEM 405.

It was not disputed that the [REDACTED] transfer on July 18, 2022, was a divestment.

The Department argues that other transfers totaling [REDACTED], made in the form of payments to 12 home care workers was also a divestment. Petitioner's attorney argues that these transfers are excluded by policy because those transfers were made in exchange for person care services and not for the purposes of becoming eligible for long term care assistance.


Department policy requires that all person care contracts/agreements, regardless of whether a relative or a non-relative are involved, must be considered, and evaluated for divestment. To be excluded from divestment by BEM 405, those personal care contracts/agreements must be performed after a written legal contract/agreement has been executed, the services must have been recommended in writing by the client's physician, and the contract/agreement must contain the notarized signature of the client or an authorized representative. The hearing record supports a finding that the transfers to 12 home care workers did not meet the requirements of BEM 405 to be excluded from divestment.

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 acted in accordance with Department policy when it determined that Petitioner had divested [REDACTED], and that her long term care was properly subject to an 8-month 4-day divestment penalty.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/nr



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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Interested Parties

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