



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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██████████, MI ██████████

Date Mailed: March 24, 2023
MOAHR Docket No.: 22-006324
Agency No.: ██████████
Petitioner: ██████████ ██████████

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 21, 2023, from Lansing, Michigan. The Petitioner was represented by Attorney Sarah Bouck. The Department of Health and Human Services (Department) was represented by Assistant Attorney General Joe Ortiz. Department Exhibit A, pp. 1-17 was received and admitted. Petitioner exhibits 1-5 were received and admitted.

ISSUE

Did the Department properly determine that Petitioner divested assets and impose divestment penalty period?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was previously receiving MA-HMP.
2. Petitioner MA-HMP case closed in February 2020 due to excess assets.
3. On ██████████ ██████████ 2020, Petitioner applied for MA-LTC.
4. On December 26, 2019, Petitioner entered into a listing agreement to sell a parcel of real estate located at ██████████ ██████████ ██████████ for sale. He was selling that home on a land contract at that time. That listing agreement expired on December 31, 2020.
5. On May 4, 2020, a Health Care Coverage Determination Notice was sent to Petitioner informing him that he was eligible for MA-LTC from March 1, 2020, and

ongoing. The home located at [REDACTED] [REDACTED] [REDACTED] was found to be non-countable because it had been listed for 30 days.

6. Petitioner testified that he entered into a verbal agreement with his stepbrother [REDACTED] [REDACTED] in 2014 to sell a home located at [REDACTED] [REDACTED] [REDACTED]
7. Petitioner entered into a written land contract in 2019 as a seller for a home located at [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] was the buyer. The purchase price was \$20,000.
8. On January 10, 2022, the [REDACTED] [REDACTED] [REDACTED] home was taken off the market and Petitioner paid Tett-Kilgore and Associates \$3,000 for property management fees.
9. Petitioner testified that he paid \$3,000 to the realtor with monies paid to him by [REDACTED] [REDACTED] towards the land contract.
10. Petitioner testified at hearing that he received additional payments totaling \$7,500 from [REDACTED] [REDACTED] after the home was taken off the market in and a balance was owed of \$4,000.
11. Petitioner testified that he paid [REDACTED] [REDACTED] his ex-wife, \$8,000 to reimburse her for financial assistance she had previously provided to him.
12. Petitioner testified that [REDACTED] [REDACTED] paid him another \$3,000 to \$4,000 between April and September 2022.
13. On July 27, 2022, Petitioner deeded [REDACTED] [REDACTED] [REDACTED] to [REDACTED] [REDACTED] (Ex. 3)
14. On October 11, 2022, Petitioner informed the Department that he transferred real property located at [REDACTED] [REDACTED] [REDACTED] to his brother.
15. The Department determined that Petitioner's transfer to his brother was divestment in the amount of \$20,000 and imposed a divestment penalty period from December 1, 2022, though February 10, 2023.
16. On October 26, 2022, a Benefit Notice was sent to Petitioner informing him that a divestment penalty would be imposed from December 1, 2022, through February 10, 2023.
17. On November 29, 2022, Petitioner requested hearing disputing the finding of divestment.

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.

DEPARTMENT POLICY

Medicaid (MA) ONLY

Divestment results in a penalty period in MA, **not** ineligibility. Divestment policy does **not** apply to Qualified Disabled Working Individuals (QDWI); see Bridges Eligibility Manual (BEM) 169.

Divestment is a type of transfer of a resource and not an amount of resources transferred.

Divestment means the transfer of a resource (see *resource defined* in this item and in glossary) by a client or his spouse that are all 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 under *transfers that are not divestment* in this item.

Note: See *annuity not actuarially sound and joint owners and transfers* in this item and BEM 401 about special transactions considered transfers for less than *fair market value*.

During the penalty period, MA will **not** pay the client's cost for:

- Long Term Care (LTC) services.
- Home and community-based waiver services.
- Home help.
- Home health. BEM 405

Asset Conversion

Converting an asset from one form to another of equal value is not divestment even if the new asset is exempt. Most purchases are conversions.

Using \$5,000 from savings to buy a used car priced at \$5,000 is conversion for equal value.

Trading a boat worth about \$8,000 for a car worth about \$8,000 is conversion for equal value.

Payment of expenses such as one's own taxes or utility bills is also not divestment. BEM 405

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). BEM 405

In this case, the only issue raised in the request for hearing is whether the transfer Petitioner made to [REDACTED] [REDACTED] by quit claiming the parcel of real estate located at [REDACTED] [REDACTED] [REDACTED] on July 27, 2022, was divestment.

Petitioner entered into a land contract with his stepbrother [REDACTED] [REDACTED] in 2019 for a house located at [REDACTED] [REDACTED] [REDACTED]. Petitioner applied for MA-LTC on March 25, 2020 and asserted to the Department that the house at [REDACTED] [REDACTED] [REDACTED] was for sale and had been for more than 30 days. A listing agreement was provided to the Department. On that basis, the home was excluded as an asset and on May 4, 2020, Petitioner was approved for MA-LTC effective March 1, 2020.

On January 10, 2022, the home in question was taken off the market because Petitioner was not able to sell the property because of the outstanding land contract Petitioner had entered into with Mr. [REDACTED] and the very high list price for the property. Petitioner

testified at hearing that he received payments totaling \$7,500 from [REDACTED] [REDACTED] after the home was taken off the market in and a balance was owed of \$4,000. Petitioner testified that Mr. [REDACTED] paid him another \$3,000 to \$4,000 between April and September 2022. Petitioner credibly testified that [REDACTED] [REDACTED] made all required payments under the land contract. On July 27, 2022, Petitioner transferred the [REDACTED] [REDACTED] home to Mr. [REDACTED] by conveying a quit claim deed. (Petitioner Exhibit 3) On October 11, 2022, Petitioner informed the Department that he transferred real property located at [REDACTED] [REDACTED] [REDACTED] to Mr. [REDACTED]

The Department determined that Petitioner's transfer to Mr. [REDACTED] on July 27, 2022, was divestment in the amount of \$20,000 and imposed a divestment penalty period from December 1, 2022, through February 10, 2023. On October 26, 2022, a Benefit Notice was sent to Petitioner informing him that a divestment penalty period would be imposed from December 1, 2022, through February 10, 2023. Petitioner had not disclosed that Mr. [REDACTED] had made substantial payments towards the land contract throughout 2022 when the Department determined that divestment had occurred.

Petitioner position is that the transfer of the home located at [REDACTED] [REDACTED] [REDACTED] to his brother is not divestment because it was a transfer of an asset for fair market value. Petitioner argued that the original sale under a land contract was conversion of the asset from one form to another.

The transfer of the home located at [REDACTED] [REDACTED] [REDACTED] from Petitioner to [REDACTED] [REDACTED] on July 27, 2022, was not divestment because Petitioner transferred the property after all payments due under the land contract had been made by the purchaser [REDACTED] [REDACTED]. Therefore, Petitioner received fair market value for the transfer, and it is not divestment. BEM 405

Having said that, the undersigned Administrative Law Judge makes no ruling with regard to whether the \$8,000 payment Petitioner made to [REDACTED] [REDACTED] in the spring of 2022, that was not previously disclosed to the Department, is divestment. In addition, no ruling is made with regard to whether Petitioner failed to timely disclose countable income, in the form of land contract payments, received between March 2020 and July 2022, that may impact his eligibility for MA-LTC.

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 that Petitioner divested assets by quit claiming the property located at [REDACTED] [REDACTED] [REDACTED] to [REDACTED] [REDACTED]

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. Delete the finding of divestment related to July 27, 2022, quit claim deed Petitioner conveyed to [REDACTED] [REDACTED] for the property located at [REDACTED] [REDACTED] [REDACTED]



AM/nr

Aaron McClintic
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 :

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Petitioner

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