



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

DONALD STEHLE
2858 ROSEWOOD ST
HUDSONVILLE, MI 49426

Date Mailed: October 20, 2023
MOAHR Docket No.: 23-005159
Agency No.: 135341309
Petitioner: Donald Stehle

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 September 28, 2023. The Petitioner was represented by Madison Buresh, his durable power of attorney (POA) and great niece and had as a witness Valarie Carpenter. The Department of Health and Human Services (Department) was represented by Megan Sterk, Assistance Payments Supervisor, and Laurel Palermo, Long-Term-Care Specialist.

ISSUE

Did the Department properly determine a divestment of \$126,375.41 and a divestment penalty of one year and 21 days from May 1, 2023 through May 21, 2024 when determining Petitioner's Medical Assistance (MA) Program eligibility?

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 28, 2023, Petitioner entered a skilled nursing home.
2. On May 5, 2023, the Department received Petitioner's application for MA benefits for an individual in a nursing facility.
3. Verification checklists were issued to Petitioner and his POA on May 17, 2023; June 8, 2023; and June 28, 2023 requesting proof of various items including, among other things, proof of the deposit of the home sale proceeds in February 2022; all bank statements from January 2022 to present; all assets sold beginning

May 1, 2018; copies of checks exceeding \$200.00 with an invoice, statement, or receipt; the purpose of the “gift of equity” totaling \$62,875.41 and showing where it was paid; Helping Hands & Faith Care Contracts signed by all parties

4. On July 24, 2023, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner and his POA informing them that he was approved for MA benefits with a patient pay amount (PPA) of \$2,548.00 per month effective May 1, 2023 but that a divestment penalty had been applied from May 1, 2023 through May 21, 2024 based upon a divestment of \$126,375.41 and MA would not pay for LTC, home care, or community based waiver services during this period.
5. On August 21, 2023, the Department received Petitioner’s request for hearing disputing the determination of the amount of the divestment and divestment penalty, specifically payments made to Adult Foster Care and “being exploited for the sale of his home.”

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.

Divestment is a type of transfer of a resource and not an amount of resources transferred. Resource means all the client’s assets and income. Transferring a resource means giving up all or partial ownership in the resource. Divestment results in a penalty period, not MA program ineligibility. BEM 405 (April 2021), pp. 1-2; BEM 400 (October 2021). During the penalty period, MA will not pay the client’s cost for: LTC services; home and community-based services; home help; or home health. MA will pay for other MA-covered services. BEM 405, p. 1. A divestment is a transfer of a resource by a client that is (i) within a specified time (the look-back period), (ii) for less than fair market value (FMV), and (iii) not an excluded transfer. BEM 405, p. 1.

In this case, Petitioner disputes that a divestment occurred and the calculation of the divestment penalty. The Department asserts that Petitioner divested \$126,375.41 in assets resulting in a penalty of one year and 21 days from May 1, 2023 through May 21, 2024.

To determine whether a divestment occurred, a baseline date must be established in order to evaluate the lookback period. BEM 405, p. 5. Once the baseline date is established, the look-back period is the 60 months prior to the baseline date. *Id.* The baseline date is the first date that the client was eligible for MA and either in LTC, approved for the waiver, or eligible for home help services. BEM 405, p. 6. Petitioner's baseline date of May 1, 2023 was not disputed; Petitioner was eligible for MA effective May 1, 2023 and living in a LTC facility. Therefore, any transactions since May 1, 2018 are evaluated to determine whether a divestment occurred.

Next the evaluation turns to whether there were any transfers for less than FMV. A transfer for less than FMV is a transaction where the amount received for a resource was less than what would have been received if the resource was offered in the open market in an arm's length transaction. BEM 405, p. 6. Divestments are found when a client gives away an asset, lump sum, or accumulated benefit including cash. BEM 405, p. 2; BEM 400, p. 1. Family can be paid for services rendered, but a presumption exists that the services were provided for free when payment was not made at the time of services. The client may rebut this presumption by providing tangible evidence that a payment obligation existed at the time of service. BEM 405, pp. 6-7. In addition, transfers for less than FMV are assumed to be made for eligibility purposes until the client provides convincing evidence that they had no reason to believe LTC might be needed. BEM 405, p. 11.

The first items of contention are transactions related to Petitioner's payment for adult foster care services. At the time of the Department's decision, Petitioner had been unable to provide any contracts or other documentation to verify Petitioner's need or receipt of services. At the hearing, Petitioner provided an Adult Foster Care Licensing and Home for the Aged Licensing Agreement for services to be provided for Petitioner by Shawna Maciel (of Helping Hands) dated January 31, 2022. Petitioner also provided documentation showing that his previous adult foster care provider, Faith Care, was cited by Licensing and Regulatory Affairs for destruction of records pertaining to Petitioner's care and payment history. In addition, Petitioner provided medical records showing that Petitioner was determined to be unable to make his own decisions as of September 14, 2021 and was discharged by Holland Hospital to Faith Care adult foster care. Total costs of Petitioner's care at Helping Hands were \$31,400.00. Payments to Faith Care totaled \$1,450.00. The Department considered both sums as divestments because of Petitioner's inability to provide a written agreement for services.

Under BEM 405, payments pursuant to personal and home care contracts are presumed to be transfers for less than fair market value unless four criteria are met. BEM 405 (January 2023), p. 8. A Personal Care Contract means a contract or agreement that provides health care monitoring, medical treatment, securing hospitalization, visitation, entertainment, travel and transportation, financial management, shopping, home help, or other assistance with activities of daily living. BEM 405, p. 7. A Home Care Contract means a contract or agreement which pays for expenses such as home or cottage care repairs, property maintenance, property taxes, homeowner's insurance, heat and utilities for the homestead or other real property of

the client. *Id.* However, policy excludes nursing facilities, adult foster cares, institutions for mental diseases, inpatient hospitals, and intermediate care facilities for individuals with intellectual disabilities from the presumption of being a divestment. BEM 405 (January 2023), p. 8. Because the Department did not dispute that Petitioner was in fact in an AFC but instead was only concerned with whether a written contract existed, and because Petitioner has been able to verify through payment histories, medical records, and communication with LARA that Petitioner was enrolled in adult foster cares, the \$34,100.00 in payments to Helping Hands/Shawna Maciel and the \$1,450.00 in payments to Faith Care are not divestments.

The second item of contention relates to the \$62,875.41 "Gift of Equity" from the sale of Petitioner's home on February 25, 2022, a \$27,600.00 payment to a family member dated March 2, 2022 for additional repairs, a \$2,400 payment to a family member of March 3, 2022 for carpet repair from the sale of the home. Initially, Petitioner's POA explained to the Department that the gift of equity and payment to the family member was provided because Petitioner's home was left in an unsafe living condition and the money was given so that repairs could be made to the home to make it liveable and no down payment would be required. This was the initial explanation provided by Petitioner's POA to the Department before she had access to the documents pertaining to the sale and had time to review them as she had been relying on the statements from Petitioner's previous Power of Attorney and family members who authorized and completed the sale. After having an opportunity to review the sale documents and other items pertaining to Petitioner's financial circumstances, POA filed complaints with adult protective services and the police regarding these transactions. At the time of the hearing, the investigations were ongoing. In August of 2023, POA and Ms. Carpenter spent time with Petitioner in the hospital while he was lucid at which time Petitioner told them that he had never authorized the sale of his home or the payments to family members.

Pursuant to policy, transfers by legal guardians, conservators, courts or administrative bodies, or anyone acting in the place of or on behalf of the client or the client's spouse are considered to be transfers by the client or spouse. BEM 405, p. 3. Petitioner does not dispute that Bonnie and Richard Stehle had Power of Attorney for Petitioner at the time of the transactions. Furthermore, there is no dispute that Bonnie Stehle completed the sale of Petitioner's home and authorized the transactions. It is also notable that Bonnie Stehle was listed as a joint account holder from which the \$27,600 and \$2,400 payments were issued. Policy indicates that when a client jointly owns a resource with another person, any action by the client or by another owner that reduces or eliminates the client's ownership or control is considered a transfer by the client. *Id.* Because Bonnie was a joint account holder and wrote checks which reduced the bank account balance and eliminated Petitioner's interest in the money, the transactions are considered transfers. Furthermore, because Petitioner did not receive anything in return of equal value and none of the exclusions apply, the transfers of the "Gift of Equity" totaling \$62,875.41; for \$27,600.00; and \$2,400.00 are considered divestments. BEM 405, pp. 6, 9-11.

Three additional transactions to POA, Paxon, and Bonnie were made totaling \$650.00. These transactions were in repayment for a dresser, television, clothing, bedding, and other miscellaneous items once Petitioner moved into the nursing home. POA was able to provide a bank statement showing the deposit of \$250, the purchase of the television, but no other receipts to verify the transactions. These documents were not provided for the hearing. Because there is nothing to show the itemized purchases and their value, these transactions are also considered divestments.

Therefore, after reviewing all of the evidence, Petitioner and/or his representatives have divested \$98,525.41.

To calculate the divestment penalty period, the total uncompensated value of all resources divested is divided by the average monthly private long-term-care cost in Michigan for Petitioner's baseline date of May 1, 2023. BEM 405, p. 13. The cost of long-term care in 2023 was \$9,939.00 resulting in a penalty period of 9.91301036, or 9 months and 27 days. *Id.* Petitioner's divestment of \$98,525.41 results in a divestment penalty period from May 1, 2023 through February 28, 2024.

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 determined Petitioner's divestment and divestment penalty.

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. Recalculate Petitioner's divestment and divestment penalty;
2. If otherwise eligible, issue supplements to Petitioner or on his behalf for benefits not previously received; and,
3. Notify Petitioner and his POA in writing of its decision.

AM/mp



Amanda M. T. Marler
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 :

Interested Parties
MDHHS-Allegan-Hearings
EQAD Hearings
M. Schaefer
MOAHR
BSC3

Via-First Class Mail :

Petitioner
Donald Stehle
2858 Rosewood St
Hudsonville, MI 49426

Authorized Hearing Rep.
Madison Buresh
2858 Rosewood Street
Hudsonville, MI 49426



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FINDINGS OF FACT

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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 determined Petitioner's divestment and divestment penalty.

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**.

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Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via-Electronic Mail :

Interested Parties
MDHHS-Allegan-Hearings
EQAD Hearings
M. Schaefer
MOAHR
BSC3

Via-First Class Mail :

Petitioner
Donald Stehle
2858 Rosewood St
Hudsonville, MI 49426

Authorized Hearing Rep.
Madison Buresh
2858 Rosewood Street
Hudsonville, MI 49426