



GRETCHEN WHITMER
GOVERNOR

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

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DIRECTOR

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Date Mailed: April 19, 2024
MOAHR Docket No.: 23-006932
Agency No.: [REDACTED]
Petitioner: [REDACTED] [REDACTED]

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 21, 2024, from Lansing, Michigan. The Petitioner was represented by Scott Brogan, Attorney. The Department of Health and Human Services (Department) was represented by Chantal Fennessy, Assistant Attorney General (AAG). Natalie Hurdman, Long Term Care Eligibility Specialist (LTC ES) appeared as a witness for the Department.

During the hearing proceeding, the Department's Amended Hearing Summary packet was admitted as Exhibit A, pp. 1-28, and from the original Hearing Summary packet, pages 9-20 were admitted Petitioner's Exhibit 1. The hearing record was left open at Petitioner's request to allow for briefs, which have been received.

ISSUE

Did the Department properly impose a divestment penalty for Petitioner's Medicaid (MA) benefit case from July 1, 2023 to September 22, 2023?

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 July [REDACTED] 2021, a Hearing Decision was issued finding that the Department acted in accordance with Department policy when it determined Petitioner's eligibility for MA resulting in the removal of the June 1, 2020 through August 23, 2020 divestment penalty. (Exhibit A, pp. 19-23)

2. Petitioner was eligible for MA to cover long term care services from June 1, 2020 through June 30, 2023. (Exhibit A, p. 28)
3. The Department determined that Petitioner would have a divestment penalty period of 2 months and 22 days. (Exhibit A, p. 8)
4. On June ■ 2023, a Health Care Coverage Determination Notice was issued to Petitioner stating MA was approved with a \$■ monthly patient pay amount and indicating that a divestment penalty was applied from July 1, 2023 to September 21, 2023, due to assets or income that were transferred for less than fair market value. (Exhibit A, pp. 9-14)
5. On July ■ 2023, a Benefit Notice was issued to Petitioner stating the divestment penalty period would be from July 1, 2023 to September 22, 2023. The divestment was for the \$■ gift to the daughter in April 2020. The divestment was not applied to the case in 2020 when this was reported due to COVID 19 pandemic policy. (Exhibit A, pp. 15-18)
6. On July 17, 2023, Petitioner filed a hearing request contesting the Department's determination. (Exhibit A, pp. 4-7)

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 1396-1396w-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.

In this case, it was not contested that Petitioner timely reported the divestment to the Department or that policy requires a divestment penalty period. See BEM 405, January 1, 2023, pp. 1-22. The parties dispute the timeframe the divestment penalty is being imposed.

The Department initially imposed the divestment penalty from June 1, 2020 to August 23, 2020. On July ■ 2021, a Hearing Decision was issued finding that the Department acted in accordance with Department policy when it determined Petitioner's eligibility for MA resulting the in the removal of the June 1, 2020 through August 23, 2020 divestment

penalty. This was based on the special rules in place due to the COVID 19 public health emergency. (Exhibit A, pp. 19-23).

Petitioner asserts that the Department should modify the currently imposed divestment penalty period to the original June 1, 2020 to August 23, 2023 dates. Petitioner relies on the Families First Coronavirus Response Act (FFCRA), under which the Department was not allowed to take adverse actions against a MA recipient during the public health emergency. Petitioner specifically relies upon the portion addressing when an individual requests a voluntary termination. (Petitioner Brief, pp. 3-5). As indicated in the July ■ 2021 Hearing Decision, the imposition of a divestment penalty is an adverse action that was prohibited during the public health emergency because it would result in a reduction in coverage. (Exhibit A, pp. 21-22). Accordingly, Petitioner asserts that Petitioner's voluntary request for the divestment penalty period would allow for the Department to impose the requested divestment penalty period dates. (Petitioner Brief, pp. 3-5).

As noted by Respondent, Petitioner did not appeal the July ■ 2021 hearing decision and the Department's determination to remove the June 1, 2020 through August 23, 2020 divestment penalty is not at issue for this hearing. (Respondent Brief, pp. 3-4). Rather, there is only jurisdiction to review the June 7, 2023 and July 7, 2023 determinations to impose the divestment penalty period starting July 1, 2023.

BEM 405 directs that if a penalty is determined for a transfer in the past, the Department is to apply the penalty from the first day after timely notice is given. BEM 405, January 1, 2023, p. 14. For MA long term care (LTC) recipients, timely notice must be given before actually applying the penalty. BEM 405, January 1, 2023, p. 14. Petitioner is a MA LTC recipient. Accordingly, the Department provided timely notice to Petitioner by issuing the June 7, 2023, Health Care Coverage Determination Notice indicating that a divestment penalty was applied from July 1, 2023 to September 21, 2023. (Exhibit A, pp. 9-14). The Department corrected the divestment penalty period when it issued the July 7, 2023, Benefit Notice stating the divestment penalty period would be from July 1, 2023 to September 22, 2023. The Benefit Notice provided timely notice of the one-day addition to the divestment penalty. (Exhibit A, pp. 15-18).

Petitioner argues that the Department's failure to notify her that it would not allow her to serve the initial divestment penalty until after she had already made other arrangements to pay the nursing home during that time period prevented her from "fixing" the problem. It was asserted that had the Department timely notified Petitioner that it could not impose the requested divestment period, Petitioner could have immediately requested a closure of her MA benefit case so that she could reapply. Then a divestment penalty could have been applied when eligibility was determined for the new application. (Petitioner Brief, pp. 4-5). However, even if it would have been possible to request a closure followed by a reapplication in a timeframe that would have allowed for the requested divestment penalty period dates to be imposed, this Administrative Law Judge has no equitable authority and cannot order a modification of the currently imposed divestment penalty dates on this basis.

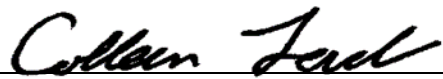
Petitioner's arguments assert that she is having to serve two divestment penalty periods for the same transfer. (Petitioner Brief pp. 1-5). However, the original June 1, 2020 through August 23, 2020 divestment penalty period was removed. As indicated by Respondent, the Department would have paid for the nursing home care for Petitioner during this period. (Respondent brief pp. 1-2 and 5-6). Petitioner was eligible for MA to cover long term care services from June 1, 2020 through June 30, 2023. (Exhibit A, p. 28). Accordingly, Petitioner is not being forced to serve two penalty periods for the same transfer.

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 properly imposed a divestment penalty for Petitioner's MA benefit case from July 1, 2023 to September 22, 2023.

DECISION AND ORDER

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

CL/dm



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 :

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