



GRETCHEN WHITMER  
GOVERNOR

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

MARLON BROWN DPA  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] AZ [REDACTED]

Date Mailed: May 20, 2024  
MOAHR Docket No.: 24-002464  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 April 18, 2024, from Lansing, Michigan. The Petitioner was represented by his power of attorney [REDACTED]. The Department of Health and Human Services (Department) was represented by Laurel Palermo Long Term Care Specialist. Department Exhibit 1, pp. 1-40 was received and admitted.

### **ISSUE**

Did the Department properly determine that Petitioner divested assets?

### **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 [REDACTED], 2023, Petitioner applied for MA-LTC.
2. On February 14, 2024, a Health Care Coverage Determination Notice was sent to Petitioner informing him that he was approved for MA-LTC.
3. On March 14, 2024, an Amended Benefit Notice was sent to Petitioner informing him that there was a finding of divestment in the amount of \$ [REDACTED] and there was a divestment penalty period from November 1, 2023, through November 6, 2023.
4. On February 29, 2024, Petitioner requested a hearing disputing the finding of divestment.

5. The Department found that purchases and payments made between February 2, 2023, and December 12, 2023, to [REDACTED], Pizza Hut, and Amazon to be not for the benefit of Petitioner and therefore were divestment.
6. Petitioner's power of attorney [REDACTED] testified at hearing that the payments made to [REDACTED] were services performed for Petitioner. She also testified that the payments to Pizza Hut were for gift cards for the staff at the facility where Petitioner resides. She also testified that the purchase from Amazon were for items for Petitioner.

### **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.

#### **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. BEM 405

In this case, the Department requested that Petitioner verify several purchases and payments that were made between February 2, 2023, and December 12, 2023. The payments in question were to [REDACTED], Pizza Hut, and Amazon. Petitioner's power of attorney [REDACTED] testified at hearing that the payments made to [REDACTED] were for services performed for Petitioner. She also testified that the payments to Pizza Hut were for gift cards for the staff at the facility where Petitioner resides. She also testified that the purchases from Amazon were for items for Petitioner. The Department representative testified that Petitioner was given an opportunity to verify that the purchases in question were for the benefit of Petitioner but that the receipts provided were insufficient to establish that the purchases were for the benefit of Petitioner.

The documentation provided by Petitioner show cancelled checks to [REDACTED], checking account records showing purchases at a Pizza Hut in [REDACTED], Arizona, and checking account records showing purchases to Amazon. These documents were insufficient to establish that the purchases were made for the benefit of Petitioner. Therefore, the finding of divestment was proper and correct and consistent with Department policy. BEM 405

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 divested assets in the amount of \$[REDACTED].

**DECISION AND ORDER**

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

AM/cc



---

**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 :**

**Interested Parties**

MDHHS-Allegan-Hearings  
BSC3-HearingDecisions  
EQADHearings  
M. Schaefer  
MOAHR

**Via-First Class Mail :**

**Authorized Hearing Rep.**

██████████  
████████████████████  
██████████, AZ ██████████

**Petitioner**

██████████  
████████████████████  
████████████████████  
██████████, AZ ██████████