



GRETCHEN WHITMER  
GOVERNOR

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

MARLON BROWN  
DIRECTOR

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Date Mailed: May 21, 2024  
MOAHR Docket No.: 24-002477  
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 April 23, 2024, from Lansing, Michigan. The Petitioner was represented by her guardian and daughter ██████████. ██████████ also appeared and testified for the Department. The Department of Health and Human Services (Department) was represented by Laurel Palermo Long Term Care Specialist. Megan Sterk AP Supervisor also appeared and testified for the Department. Department Exhibit 1, pp. 1-76 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 ██████████ 2023, Petitioner applied for MA-LTC.
2. On January 2, 2024, a Health Care Coverage Determination Notice was sent to Petitioner informing her that she was approved for MA-LTC but there was a finding of divestment in the amount of \$██████████ and there was a divestment penalty period from September 1, 2023, through September 6, 2023.
3. On February 29, 2024, Petitioner requested a hearing disputing the finding of divestment.

4. The Department found that purchases and payments made between May 5, 2023, and December 18, 2023, to Walmart, Family Dollar, McDonald's, T&C Market, and cash were not for the benefit of Petitioner and were therefore divestment.
5. [REDACTED] credibly testified at hearing that the purchases made at Walmart, Family Dollar, McDonald's, T&C Market and with cash were for the benefit of 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

#### **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. BEM 405

In this case, [REDACTED] credibly testified at hearing that the purchases made at Walmart, Family Dollar, McDonald's, T&C Market and with cash were for the benefit of Petitioner. Petitioner received fair value for the items that were purchased on her behalf. [REDACTED] provided some receipts showing that she purchased food items for Petitioner. [REDACTED] credibly testified at hearing that she personally observed [REDACTED] bring bags full of items to the nursing home for Petitioner to consume. It should also be noted that [REDACTED] has a fiduciary obligation as Petitioner's guardian to act in Petitioner's interest. The Department presented insufficient evidence to establish that

the purchases in question were not for the benefit of Petitioner. Therefore, the finding of divestment was improper and incorrect and inconsistent 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 did not act in accordance with Department policy when it determined that Petitioner divested assets.

### **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 and lift the divestment penalty.
2. Reprocess Petitioner's MA-LTC application going back to the date of application.
3. Activate MA going back to the date of application if Petitioner is found otherwise eligible.

AM/cc

  
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**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 :**

**Petitioner**

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**Authorized Hearing Rep.**

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