



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 20, 2024
MOAHR Docket No.: 24-002534
Agency No.: [REDACTED]
Petitioner: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on May 9, 2024, from Lansing, Michigan. Petitioner was represented by her authorized hearing representative [REDACTED] [REDACTED]. The Department was represented by Samantha Johnson and Eric Carlson.

ISSUE

Did the Department of Health and Human Services (Department) properly determine that the divestment penalty that was applied towards Petitioner's Long Term Care (LTC) Medical Assistance (MA)?

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 November [REDACTED] 2023, the Department received Petitioner's request for Long Term Care (LTC) Medical Assistance (MA). Exhibit A, pp 7-16.
2. Petitioner provided the Department with verification that on November [REDACTED] 2018, she entered into a mortgage agreement as a co-signor with her granddaughter. Exhibit A, pp 17-23.
3. Petitioner made the payments on the mortgage. Exhibit A, pp 24-25.
4. The mortgage was paid off when the property was sold. Exhibit A, p 26.
5. On March [REDACTED] 2024, the Department notified Petitioner that she was eligible for Medical Assistance (MA) but that Long Term Care (LTC) benefits would be subject to a divestment penalty. Exhibit A, p 33.

6. On February 27, 2024, the Department received Petitioner's request for a hearing protesting the divestment penalty that was applied towards Long Term Care (LTC) Medical Assistance (MA). Exhibit A, pp 3-6.

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 through 42 USC 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 through 42 CFR 420.25. The Department administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.103 through MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

Divestment means a transfer of a resource by a client or his spouse that is within a specified time, for less than fair market value, and not excluded by policy. Divestment results in a penalty period where the client's expenses for long term care (LTC) services, home and community-based services, home help, and home health are not covered by the client's Medical Assistance (MA) benefits. Department of Human Services Bridges Eligibility Manual (BEM) 405 (January 1, 2015), p 1.

On November █ 2023, Petitioner reported that she had entered into Long Term Care and requested assistance from the Department. Petitioner provided the Department with verification that she was a co-signor on a mortgage agreement with her granddaughter within 60 months of entering into long-term care. The hearing record also supports a finding that Petitioner made payments on this mortgage but did not receive anything back when the property was eventually sold.

Petitioner's representative does not dispute that Petitioner made payments on the mortgage and credibly testified that Petitioner was obligated to make the payments on her granddaughter's mortgage in order to protect her own home from foreclosure.

However, the payments on this mortgage were a transfer of Petitioner's resources not excluded by BEM 405 and Petitioner did not receive anything in return. These transfers fit the definition of divestment in BEM 405 since they reduced Petitioner countable assets allowing her to become eligible for MA benefits, but she did not receive a fair market return from those transfers.

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 did not act in accordance with Department policy when it determined that Petitioner had divested available resources and that a divestment penalty should be applied towards Petitioner's Long Term Care (LTC) Medical Assistance (MA).

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/dm



Kevin Scully
Administrative Law Judge
Michigan Office of Administrative Hearings
and Rules (MOAHR)

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 :

DHHS
Eric Carlson
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SchaeferM

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MOAHR

Via-First Class Mail :

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]