



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: August 29, 2024
MOAHR Docket No.: 24-006612
Agency No.: [REDACTED]
Petitioner: [REDACTED] [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 July 30, 2024, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Rachel Meade Hearing Facilitator. Department Exhibit 1, pp. 1-116 was received and admitted.

ISSUE

Did the Department properly determine that Petitioner divested assets and impose divestment penalty period?

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 [REDACTED] 2022, Petitioner executed a quit claim deed transferring her home to her son [REDACTED] [REDACTED] for \$[REDACTED] (Ex. 1, p.15)
2. Petitioner was found to have divested \$[REDACTED] because she deeded her home to her son. The Department imposed a divestment penalty period of 4 months and 23 days
3. Petitioner transferred \$[REDACTED] from her [REDACTED] bank account that was also found to be divestment.

4. On December █ 2023, Petitioner executed a quit claim/lady bird deed purporting to transfer her home to her son █ █ (Ex. 1, p.21)
5. On February █ 2024, a Health Care Coverage Determination Notice was sent to Petitioner informing her that she was eligible for MA-LTC with a patient pay amount of \$ █
6. On May █ 2024, a Health Care Coverage Determination Notice was sent to Petitioner informing her she was eligible for MA-LTC with the remainder divestment penalty period of 2 months and 11 days and an additional divestment penalty period of 8 days.
7. On May 24, 2024, Petitioner requested hearing disputing the finding of divestment and imposition of divestment penalty period.

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.

See *annuity not actuarially sound* and *joint owners and transfers* in this item and BEM 401 about special transactions considered transfers for less than *fair market value*.

During the penalty period, MA will **not** pay the client's cost for:

Long Term Care (LTC) services.

Home and community-based waiver services.

Home help.
Home health. BEM 405

Real Property and Mobile Home Value

FIP, SDA, RCA, SSI-Related MA Only, CDC and FAP To determine the fair market value of real property and mobile homes use: • Deed, mortgage, purchase agreement or contract. • State Equalized Value (SEV) on current property tax records multiplied by two. • Statement of real estate agent or financial institution. • Attorney or court records. • County records. BEM 400

In this case, on April [REDACTED] 2022, Petitioner executed a quit claim deed transferring her home to her son [REDACTED] [REDACTED] for \$[REDACTED] (Ex. 1, p.15) That transfer took place during the 5 year look back period and was for less than fair market value and is divestment. BEM 405 The Department was correct to conclude that this transfer was divestment and was correct to make of fining of divestment in the amount of \$[REDACTED] and impose a divestment penalty period of 4 months and 23 days. Petitioner also transferred \$[REDACTED] form her [REDACTED] bank account during the look back period and it was not established that this transfer benefitted Petitioner, that transfer was also properly found to be divestment.

Petitioner’s attempt to execute a subsequent transfer of her home through a lady bird deed was invalid because the transfer had already taken place and she had no interest to transfer. [REDACTED] [REDACTED] testified at hearing that he sold his mother’s home and received less than the amount determined to be divestment. The Department based the amount of the divestment on double the State Equalized Value based on the property tax records for the time period when the divestment occurred. (Ex. 2, pp. 4-11) BEM 400 That calculation was proper and correct and consistent with Department policy.

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 and imposed a divestment penalty period.

DECISION AND ORDER

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

AM/dm



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 :

DHHS
Heather Dennis
Jackson County DHHS
**MDHHS-Jackson-
Hearings@michigan.gov**

SchaeferM

EQADHearings

BSC4HearingDecisions

MOAHR

Via-First Class Mail :

Petitioner
Naomi Edmond
151 2nd St
Spring Arbor, MI 49283

Authorized Hearing Rep.

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Authorized Hearing Rep.

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