



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

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DIRECTOR

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Date Mailed: December 3, 2024
MOAHR Docket No.: 24-008504
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 hearing was held on October 2, 2024, via teleconference. Attorney Dominic Andriacchi represented Petitioner. ██████████, Authorized Hearing Representative (AHR), appeared on behalf of Petitioner. Amanda Zack, Assistant Attorney General, represented the Michigan Department of Health and Human Services (MDHHS or Department). ██████████, Long-Term Care Specialist, and ██████████ appeared as a witness for Respondent MDHHS. Petitioner’s proposed exhibit was admitted at the hearing as Petitioner’s Exhibit 1, pp. 1-101. MDHHS’ proposed exhibits were admitted at the hearing as MDHHS Exhibit A, pp. 1-62 and MDHHS Exhibit B, pp. 1-27.

ISSUE

Did MDHHS properly determine the divestment penalty related to Petitioner’s receipt of Long-Term Care (LTC) Medicaid (MA) coverage?

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 ██████████ 1998, Petitioner and ██████████ purchased property in ██████████ Michigan (Subject Property) (Exhibit A, p. 27).
2. On ██████████ 2021, ██████████ transferred her interest in Subject Property to Petitioner via quit claim deed (Exhibit A, p. 28).

3. On [REDACTED] 2021, Petitioner executed a quit claim deed transferring title of Subject Property to [REDACTED] (Son/AHR), Petitioner's son, for no actual consideration (Exhibit A, p. 29). Petitioner reserved a life estate for himself (Exhibit A, p. 29).
4. On [REDACTED], 2021, Son reinstated the mortgage on Subject Property, which was previously in default, and made the past due payments (Exhibit A, p. 5).
5. On [REDACTED] 2021, Son executed a quit claim deed transferring title of the Subject Property to himself and Petitioner as joint tenants with rights of survivorship (Exhibit A, p. 30). Grantor (Son) reserved a life estate for himself in Subject Property (Exhibit A, p. 30).
6. On [REDACTED] 2024, AHR submitted an application for MA LTC coverage on behalf of Petitioner (Exhibit A, p. 20). The application indicated that Petitioner resided at [REDACTED] (Exhibit A, p. 20). AHR further indicated that Petitioner had interest in real property (Exhibit A, p. 24). MDHHS processed the application as a MA redetermination (Exhibit A, p. 1).
7. On February 14, 2024, MDHHS sent Petitioner a Verification Checklist (VCL) requesting verification of home/building ownership by February 26, 2024 (Exhibit A, p. 34).
8. On February 26, 2024, MDHHS sent Petitioner a VCL extension, requesting proof of home/building ownership by March 7, 2024 (Exhibit A, p. 36).
9. On March 8, 2024, MDHHS sent Petitioner a VCL requesting records of any assets sold or transferred within the last 60 months by March 18, 2024 (Exhibit A, pp. 40-41). The enclosed Quick Note requested any deeds for the transfer of home between March 2021 through current date, any other documents pertaining to the purchase or sale of the home, any documents showing the State Equalized Value (SEV) of the home, and property tax statements (Exhibit A, p. 44).
10. On March 19, 2024, MDHHS sent Petitioner a VCL requesting records of any assets sold or transferred within the last 60 months by March 29, 2024 (Exhibit A, pp. 45).
11. On April 11, 2024, MDHHS sent Petitioner a Health Care Coverage Determination Notice indicating that Petitioner was eligible for MA benefits from March 1, 2024 ongoing with a \$2,726.00 Patient Pay Amount (Exhibit A, p. 53). The notice further indicated that MA would not pay for LTC and home and community-based services from May 1, 2024 through August 6, 2024 due to a divestment penalty (Exhibit A, p. 53). The notice indicated that the baseline date was September 15, 2021 and that a 50% divestment occurred due to the transfer of a home to Petitioner's son (Exhibit A, p. 53).
12. On June 27, 2024, Petitioner's AHR requested a hearing regarding MDHHS' determination (Exhibit A, p. 3).

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).

Medicaid (MA) 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. MDHHS administers MA pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MA is also known as Medical Assistance (MA). BEM 105 (October 2023), p. 1.

In this case, MDHHS approved Petitioner for LTC MA and imposed a divestment penalty due to the transfer of real property for less than Fair Market Value (FMV). AHR disputed MDHHS' determination regarding the divestment penalty.

Divestment means the transfer of a resource by a client or his spouse that is: (i) within a specified period (look-back period); (ii) for less than fair market value (FMV); and (iii) not excluded by policy. BEM 405 (January 2024), pp. 1-2. Divestment is a type of transfer of a resource and not an amount of resources transferred. *Id.* Resource means all the client's assets and income. *Id.* Transferring a resource means giving up all or partial ownership in the resource. *Id.* Divestment results in a penalty period, not MA program ineligibility. *Id.* During the penalty period, MA will not pay the client's cost for: LTC services; home and community-based services; home help; or home health. MA will pay for other MA-covered services. *Id.*

The first step in determining the period of time that transfers can be evaluated for divestment is determining the baseline date. BEM 405, p. 5. Once the baseline date is established, MDHHS determines the look-back period, which is 60 months prior to the baseline date. *Id.* A person's baseline date is the first date that the client was eligible for MA and is in LTC, approved for a waiver, eligible for home health services, or eligible for home help services. *Id.* When a client is subject to a divestment penalty, the divestment penalty starts on the date which the client is eligible for MA and would otherwise be receiving institutional level care (LTC, MIChoice wavier, home help, or home health services), and is not already part of a penalty period. *Id.*, pp. 13-14. and 42 USC 1396p(c)(1)(D)(ii). Less than FMV means the compensation received in return for a resource was worth less than the fair market value of the resource. BEM 405, pp. 6-7. That is, the amount received for the resource was less than what would have been received if the resource was offered in the open market and in an arm's length transaction. *Id.*

It is not a divestment to transfer a homestead to the client's child over age 21 who (i) lived in the homestead for at least two years immediately before the client's admission to LTC or waiver approval (BEM 106), and (ii) provided care that would otherwise have required LTC or waiver services (BEM 106), as documented by a physician's (M.D. or D.O.) statement. BEM 405 (January 2024), p. 11. Transfers for another purpose other than to qualify or remain eligible for MA are not considered divestments. *Id.* MDHHS is required to assume transfers for less than FMV were for eligibility purposes until the client or spouse provides convincing evidence that they had no reason to believe LTC, PACE or MIChoice waiver services might be needed. *Id.*

Here, MDHHS alleged that the transfer of Subject Property from Petitioner to Son constituted a divestment, because Petitioner transferred the property for no real consideration. MDHHS also alleged that the SEV of Subject Property in 2021 was \$██████████, which was the value provided by the Marquette County Treasurer (Exhibit A, p. 31). MDHHS determined that the FMV of the house was two times the SEV, or \$██████████. Although Petitioner transferred his interest in Subject Property to Son on ██████████ 2021, Son executed a subsequent quit claim deed transferring his interest in Subject Property to Petitioner and himself. Thus, after this deed was executed, Petitioner retained a 50% interest in Subject Property. Therefore, MDHHS determined that a 50% divestment had occurred, and the divested amount was \$██████████, which was half of the FMV of the Subject Property at the time of transfer. Based on a divestment of \$██████████, MDHHS determined that Petitioner was subject to a divestment penalty of three months and six days and the year of the baseline date was 2021 (Exhibit A, p. 32).

At the hearing, AHR testified that Petitioner was suffering from a variety of health issues in 2021, which required hospitalization, and later, admission to a nursing home. Due to Petitioner's medical issues, he was no longer able to manage his finances, and his home was in danger of being lost to mortgage foreclosure. Petitioner executed a Durable Power of Attorney granting his Son/AHR authority to act as his agent, effective December 26, 2019 (Exhibit 1, pp. 94-98). AHR testified that the transfers related to Subject Property were executed to save Petitioner's home from mortgage foreclosure. AHR introduced default notices demonstrating the delinquency (Exhibit 1, pp. 3-72). Additionally, AHR disputed the valuation of the property, arguing that it was not worth the FMV estimate provided by the Marquette County Treasurer.

AHR argued that the funds that he used to avoid foreclosure and the money that he put into the house in repairs should be considered when determining the divestment amount. AHR testified that he was unable to insure the house due to its condition, and that he withdrew money from his 401k in order to fix the heating system and the water damage that resulted from broken pipes, as well as other repairs.

As stated above, the first step in determining whether a divestment occurred is determining a client's baseline date. The baseline date is the date the client became eligible for MA and was in LTC, approved for a waiver, eligible for home health services, or eligible for home help services. BEM 405, p. 5. Here, MDHHS determined that

Petitioner was eligible for LTC MA beginning on March 1, 2024 ongoing (Exhibit A, p. 53). However, MDHHS indicated on the Health Care Coverage Determination Notice that the baseline date was September 15, 2021 (Exhibit A, p. 53). Although MDHHS stated that the [REDACTED], 2024 application was processed as a MA redetermination, it is unclear from the record whether Petitioner was previously receiving MA and if so, what category of MA coverage Petitioner was receiving. Thus, it is unclear how MDHHS determined that Petitioner's baseline date was September 15, 2021. If this was the date that Petitioner was admitted to a nursing home, MDHHS would also have to show that he was eligible for MA on that date. MDHHS calculated the divestment penalty period based on a baseline year of 2021; however, MDHHS has failed to show that it properly determined Petitioner's baseline date. It is also unclear from the record why the divestment penalty period would be from May 1, 2024 through August 6, 2024, if the baseline date was September 15, 2021.

Given these discrepancies, MDHHS has failed to show that it properly determined the divestment penalty in this case. Upon review, MDHHS should consider whether any transfers were executed for a purpose other than qualifying for MA and whether the estimate of the FMV of the home was accurate, based on all available information.


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 MDHHS failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's divestment penalty for LTC MA.

DECISION AND ORDER

Accordingly, MDHHS' decision is **REVERSED**. MDHHS 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. Redetermine Petitioner's eligibility for LTC MA, including whether he is subject to a divestment penalty, from the date of application, ongoing, requesting additional information as necessary; and
2. Notify Petitioner and AHR of its decision in writing.

LJ/pt



Linda Jordan
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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Petitioner

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