



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: November 22, 2024
MOAHR Docket No.: 24-009988
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 zoom videoconference hearing was held on October 24, 2024, from Lansing, Michigan. The Petitioner was represented by Attorney Martin Rogalski. [REDACTED] [REDACTED] and [REDACTED] and testified for the Petitioner. The Department of Health and Human Services (Department) was represented by Assistant Attorney General Mia Williams. Assistant Attorney Erin Harrington also appeared. Dawn Berridge, Carmencita Fulgado-Taylor and Bridget Heffron appeared and testified for the Department. Department Exhibits A-L were received and admitted. Petitioner's Exhibits 1-10 were received and admitted.

ISSUE

Did the Department properly determine that Petitioner's divested assets and impose a 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 May [REDACTED] 2024, Petitioner applied for Long Term Care Medicaid (MA-LTC).
2. On October [REDACTED] 1995, Petitioner entered into a land contract with [REDACTED] [REDACTED] and Brian Prewitt for the sale of 10 acres of vacant hunting land in [REDACTED] Michigan. (Ex. 4)
3. On November [REDACTED] 1995, title insurance was purchased related to the land contract sale. (Ex. G)

4. [REDACTED] [REDACTED] credibly testified at hearing that he and his co-purchaser made payments on the land contract from 1995 through 2000 and he and his co-buyer made property tax payments on the property beginning in 1995 and continued until 2022.
5. On April [REDACTED] 2022, Petitioner signed a deed transferring the property to [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. That deed was filed with [REDACTED] County Registrar of Deeds on May [REDACTED] 2022. (Ex. 10)
6. [REDACTED] [REDACTED] sold his interest in the vacant land to [REDACTED] [REDACTED] and [REDACTED] [REDACTED] widow later sold the property to a third party.
7. On August [REDACTED] 2023, a corrective warranty deed was executed and filed with the [REDACTED] County Registrar of Deeds that was executed pursuant to and in satisfaction of the October 1995 land contract. (Ex. 3)
8. On August [REDACTED] 2024, a Health Care Coverage Determination Notice was issued to Petitioner informing her that she was eligible for MA-LTC with a divestment penalty period from June 1, 2024, through September 19, 2024. (Ex. A)
9. On August 30, 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.

Transfers for Another Purpose

Transfer of resources to a religious order by a member of that order in accordance with a vow of poverty are transfers for another purpose. As explained in this item, transfers exclusively for a purpose other than to qualify or remain eligible for MA are not divestment. BEM 405

In this case, on October 16, 1995, Petitioner entered into a land contract for the sale of 10 vacant acres of hunting land in [REDACTED] Michigan. The purchase price was \$[REDACTED] and the land contract was for 5 years. According to the credible testimony of Richard Saylor, one of the purchasers, the purchasers made payments on the land contract for 5 years and also made the property tax payments up until the property was sold to a third party. After the completion of the land contract, Petitioner was required to sign a deed transferring the property. For reasons that are unclear, a deed was not executed after all payments were made on the land contract. When [REDACTED] [REDACTED] was getting his affairs together due to a terminal illness he pursued execution of the deed. Petitioner signed over a deed transferring the property to the purchasers in 2022, that deed was faulty, and an additional corrective deed was signed over in 2023. Petitioner was required to sign over a deed because the terms of the land contract had been completed. At the time of the signing of the deeds, the title to the property was still in Petitioner's name but any ownership interest that Petitioner had was worthless. The only thing Petitioner owned was an obligation to sign a deed. The deeds Petitioner signed over in 2022 and 2023 were not executed in an effort to give away the property and become eligible for MA-LTC. The deeds were executed for another purpose, specifically to fulfill the requirements under the land contract. Policy instructs that transfers for another purpose other than to become eligible for MA are not divestment. BEM 405 Therefore, the execution of deeds in 2022 and 2023 were not divestment. BEM 405

The Department's implications that Petitioner never received fair value for the parcel of land were not supported by the facts and evidence presented at hearing. It is understandable and not suspicious that Petitioner did not have the payment records from the time period from 1995 through 2000.

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 when she executed a deed transferring the vacant land she had sold under a land contract.


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 period.
2. Reinstate and reprocess the May 5, 2024, MA-LTC application.
3. Activate MA-LTC benefits going back to the date of application if Petitioner is found to be eligible.

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 :

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Via-First Class Mail :

Authorized Hearing Rep.

[REDACTED]
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[REDACTED]

Petitioner

[REDACTED]
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