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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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[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: November 27, 2024
MOAHR Docket No.: 24-010837
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 30, 2024, via teleconference. Petitioner was represented by Petitioner's Authorized Hearing Representative (AHR) and spouse, [REDACTED] Rachel Meade, Hearings Coordinator, and Sandra McGlade, Eligibility Specialist, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department). MDHHS' Hearing Packet was admitted into evidence at the hearing as MDHHS Exhibit A, pp. 1-327.

ISSUE

Did MDHHS properly determine that Petitioner was subject to a 25-day divestment penalty concerning the receipt of Long-Term Care (LTC) Medicaid (MA) benefits?

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 [REDACTED] 2024, Petitioner submitted an application for health care coverage in a nursing home facility.
2. On July 15, 2024, MDHHS sent Petitioner a VCL requesting information regarding cash assets and transfers relating to Petitioner's savings account by July 25, 2024 (Exhibit A, pp. 294-295).
3. On July 25, 2024, MDHHS sent Petitioner a Health Care Coverage Determination Notice indicating that Petitioner was approved for MA with a patient pay amount of \$1,887.00, beginning May 1, 2024 (Exhibit A, p. 311). The notice indicated that

there was a 25-day divestment penalty due to the transfer of cash assets in January 2024 (Exhibit A, p. 311).

4. On September 12, 2024, Petitioner requested a hearing regarding the divestment penalty (Exhibit A, p. 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). 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 determined that Petitioner was eligible for LTC MA with a patient pay amount of \$1,887.00 in May 2024 and LCT MA with a patient pay amount of \$1,934.00, effective June 1, 2024 ongoing, subject to a 25-day divestment penalty (Exhibit A, p. 311). Petitioner disputed the divestment penalty.

Divestment is a type of transfer of a resource and not an amount of resources transferred. BEM 405 (January 2023), pp. 1-2. Resource means all the client's and spouse's assets and income. *Id.* Transferring a resource means giving up all or partial ownership in the resource. *Id.* A divestment is a transfer of a resource by a client or the client's spouse that is (i) within a specified time (the look-back period), (ii) for less than fair market value (FMV), and (iii) not an excluded transfer. *Id.*, p. 1. Giving an asset away is a transfer that results in a divestment. *Id.*, p. 2.

Divestment results in a penalty period, not MA program ineligibility. BEM 405, p. 1. 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. BEM 405, p. 1. 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.*, p. 6. When an individual applies for MA LTC benefits, MDHHS must review any transfer of assets by the institutionalized individual or the individual's spouse in the sixty months prior to the individual's baseline date. *Id.*, p. 5.

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. BEM 405, pp. 13-14. and 42 USC 1396p(c)(1)(D)(ii).

MDHHS determined that Petitioner was subject to a 25-day divestment penalty due to two cash transfers made from Petitioner's spouse's (AHR's) bank account in January 2024, in the amounts of \$[REDACTED] and \$[REDACTED], resulting in a \$[REDACTED] divestment (Exhibit A, pp. 297-298). AHR did not dispute that the cash transfers were made and testified that they were gifts to her grandchildren. AHR further testified that Petitioner's admission to a nursing home was unexpected and was the result of complications from COVID-19. AHR testified that she did not anticipate that Petitioner would need LTC services in an institutionalized setting.

Transfers exclusively for a purpose other than to qualify or remain eligible for MA are not considered divestments. BEM 405, p. 11. MDHHS is required to assume that transfers for less than fair market value 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.* Policy provides the following example: "[REDACTED], age [REDACTED], was in good health when he gave his vacation cottage to his nephew. The next day [REDACTED] was in an automobile accident. His injuries required long-term care. The transfer was not divestment because [REDACTED] could not anticipate his need for LTC services."

AHR provided a letter to MDHHS when she requested the hearing in this case. In the letter she explained that Petitioner was hospitalized after contracting [REDACTED] in [REDACTED] 2020 (Exhibit A, p. 7). During that time, he endured two [REDACTED], a [REDACTED] and showed signs of serious [REDACTED] issues (Exhibit A, p. 7). He was hospitalized for 80 days, went to a care facility for approximately two weeks, and then returned home (Exhibit A, p. 7). At home, he continued to require oxygen and physical therapy treatments (Exhibit A, p. 7). On January 3, 2024, he fell and was taken to the emergency room (Exhibit A, p. 7). The fall was determined to be caused by his unsteady, weak and cognitive condition (Exhibit A, p. 7). The treatment plan included physical and occupational therapy and it was anticipated that he would be able to return home (Exhibit A, p. 7). Instead, he was admitted to Mission Point's rehabilitation wing and his condition continued to decline (Exhibit A, p. 7).

Based on the evidence provided, MDHHS properly determined that the transfers constituted divestments, because Petitioner's spouse gave away cash assets during the look-back period. BEM 405, p. 2. The amount of the transfers was not disputed and no evidence was provided that the funds constituted non-countable or excluded resources under Department policy. Although AHR provided testimony that the transfers were not related to MA eligibility, it cannot be said that AHR could not reasonably anticipate Petitioner's need for LTC services. Petitioner's conditions began in [REDACTED] and continued until 2024 when he was admitted into the hospital after a fall. Petitioner required in-home care to administer oxygen and to regain the ability to walk during his time at home. Additionally, the transfers occurred in January 2024, after Petitioner was admitted to the hospital. Given the severity of Petitioner's condition, the need for LTC services was reasonably foreseeable.

MDHHS determined that Petitioner's baseline date was [REDACTED] 2024, and thus, he was subject to a 25-day divestment penalty beginning on that day. The penalty period is computed by dividing (1) the total "uncompensated value" of the divested resource by (2) the average monthly private LTC cost in Michigan for the client's baseline date. 42 USC 1396p(c)(1)(E)(i); BEM 405, p. 14. The uncompensated value of a divested resource is the resource's cash or equity value less any compensation received. BEM 405, p. 15. In this case, the uncompensated value is the full \$ [REDACTED]

When the \$ [REDACTED] uncompensated value is divided by the \$ [REDACTED] average monthly private LTC cost in Michigan in 2024, the disqualification period is .837 months. Multiplying the fraction by 30 equals 25 (rounding down), which is the number of days for the penalty period in a partial month. See BEM 405, p. 13. Thus, the record shows that MDHHS properly determined that Petitioner was subject to a 25-day penalty period for LTC MA services, beginning on May 1, 2024.

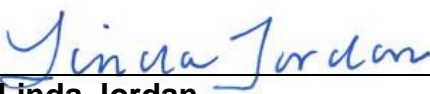
A penalty period may be waived if it creates undue hardship. BEM 405, p. 16. However, it is assumed that there is no undue hardship unless there is evidence from the petitioner's physician that necessary medical care is not being provided and the client needs treatment for an emergency condition where a delay in treatment may result in the person's death or permanent impairment of the person's health. BEM 405, pp. 16-17. In this case, there was no evidence supporting undue hardship.

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 MDHHS acted in accordance with Department policy when it determined that Petitioner had divested \$ [REDACTED] and applied a divestment penalty.

DECISION AND ORDER

Accordingly, MDHHS' decision is **AFFIRMED**.

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:

DHHS
Heather Dennis
Jackson County DHHS
301 E. Louis Glick Hwy.
Jackson, MI 49201
MDHHS-Jackson-Hearings@michigan.gov

Interested Parties

BSC4
M. Schaefer
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Via-First Class Mail:

Authorized Hearing Rep.

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Petitioner

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