



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
DIRECTOR

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Date Mailed: December 9, 2024
MOAHR Docket No.: 24-011600
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 November 7, 2024, via videoconference. ██████████ appeared as Petitioner’s Authorized Hearing Representative (AHR). Petitioner’s Guardian, ██████████ (Guardian), appeared on behalf of Petitioner. Lorraine Masty, Family Independence Manager (FIM), and Michelle Mayo, Eligibility Specialist, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department). MDHHS’ Hearing Packet as admitted into evidence at the hearing as MDHHS Exhibit A, pp. 1-446.

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. Petitioner was an ongoing recipient of MA coverage.
2. In ██████████ 2020, Petitioner received an inheritance of \$██████████. MDHHS verified the inheritance on June 24, 2021. MA was pending for closure due to the inheritance, but the closure was delayed due to the COVID-19 related bar on MA terminations.

3. On [REDACTED] 2023, Petitioner was admitted to [REDACTED] facility [REDACTED] (Exhibit A, p. 3). At the time, Petitioner was approved for MA with a deductible and Plan First MA, a limited coverage category.
4. On August 28, 2023, MDHHS approved Petitioner for LTC MA (Exhibit A, p. 3).
5. On [REDACTED], 2023, Petitioner submitted a Redetermination for Medicare Savings Program (MSP) (Exhibit A, pp. 22-23).
6. On October 10, 2023, MDHHS sent Petitioner a Verification Checklist (VCL), requesting proof of vehicle titles for [REDACTED] and [REDACTED], savings account, cash surrender value of life insurance policies, monthly health insurance premiums, and how the \$[REDACTED] inheritance was spent (Exhibit A, p. 29). The proofs were due by October 20, 2023 (Exhibit A, p. 29).
7. On [REDACTED] 2023, Guardian requested an extension of the deadline for the verifications and MDHHS granted the extension (Exhibit A, p. 3).
8. On October 26, 2023, Guardian submitted a statement that the \$[REDACTED] inheritance was gifted, donated and spent (Exhibit A, p. 3). Guardian provide a title for a [REDACTED], but did not provide a proof of purchase or invoice to verify how much was spent on the vehicle (Exhibit A, p. 3).
9. On November 2, 2023, MDHHS sent Petitioner a Health Care Coverage Determination Notice indicating that MA would be closed, effective December 1, 2023 (Exhibit A, p. 32). The notice indicated that Petitioner was approved for Plan First MA, a limited coverage category, from April 1, 2023 to June 30, 2023 and from December 1, 2023 ongoing (Exhibit A, p. 32). The notice also indicated that Petitioner was approved for MA with at \$[REDACTED] monthly patient pay amount from October 1, 2023 ongoing (Exhibit A, p. 32).
10. On [REDACTED], 2023, Guardian contacted MDHHS regarding the verifications requested (Exhibit A, p. 3).
11. On [REDACTED] 2023, Guardian submitted verification of [REDACTED] life insurance policies (Exhibit A, p. 3).
12. On [REDACTED], 2023, Guardian contacted MDHHS regarding the verifications, including the life insurance policy (Exhibit A, p. 3).
13. On [REDACTED], 2023, Guardian submitted bank statements from [REDACTED] showing a \$[REDACTED] deposit made on [REDACTED] 2020 and a \$[REDACTED] deposit made in [REDACTED] 2020 (Exhibit A, p. 4).
14. On December 5, 2023, MDHHS determined that a divestment occurred due to the deposits of \$[REDACTED] (Exhibit A, p. 4). MDHHS determined that Petitioner's previous admission into LTC created a baseline date of 2018 (Exhibit A, p. 4).

MDHHS determined that the divestment penalty period was one year, 9 months and 14 days (Exhibit A, p. 69).

15. On December 11, 2023, MDHHS certified LTC MA on behalf of Petitioner, with a divestment period of January 1, 2024 to October 15, 2025 (Exhibit A, p. 4). On December 11, 2023, MDHHS sent Petitioner a Health Care Coverage Determination Notice indicating that Petitioner was approved for MSP coverage from October 1, 2023 to November 30, 2023, approved for LTC MA with a patient pay amount of \$1,318.00 from December 1, 2023 to December 31, 2023 and LTC MA with a patient pay amount of \$1,357.00, from January 1, 2024 ongoing (Exhibit A, p. 70). The notice indicated that MA would not pay for Petitioner's LTC from January 1, 2024 through October 14, 2025 due to a divestment (Exhibit A, p. 70).
16. On March 11, 2024, AHR requested a hearing on behalf of Petitioner regarding the divestment penalty.
17. On [REDACTED] 2024, Guardian submitted additional documents, including bank statements and cashier's checks showing how a portion of the funds were spent (Exhibit A, p. 4). Cashier's checks showed the purchase of the [REDACTED], hot water heater, removal of trees from homestead, and cash gifts to several individuals (Exhibit A, p. 4).
18. On August 19, 2024, MDHHS processed the documentation received on [REDACTED] 2024 (Exhibit A, p. 4).
19. In [REDACTED] 2024, Guardian submitted various bank statements and other financial information to MDHHS (Exhibit A, pp. 203-348).
20. On September 16, 2024, MDHHS sent Petitioner a Verification Checklist (VCL) requesting verification of a life insurance policy and checking account information (Exhibit A, p. 349). The VCL stated, "[REDACTED] - [REDACTED] withdrawals (2) monthly 2020-2023 have not been verified. Please provide the current life insurance policy, proof of life insurance policy surrender or cancellation, or proof of health insurance premiums. Also requesting a current SNB 8039 statement" (Exhibit A, p. 349). The VCL indicated that proofs were due by September 26, 2024 (Exhibit A, p. 349).
21. On [REDACTED], 2024, Guardian requested an extension of the verification deadline and provided some of the requested information (Exhibit A, p. 351).
22. On October 7, 2024, MDHHS revised Petitioner's divestment penalty after verifying expenses for Petitioner in the amount of \$[REDACTED] (Exhibit A, p. 5). MDHHS Determined that the revised penalty period was one year, seven months and 17 days (Exhibit A, p. 5).

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 the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MA is also known as Medical Assistance (MA). BEM 105 (January 2021), p. 1.

In this case, MDHHS determined that Petitioner was approved for LTC MA with a divestment penalty of one year, nine months and 14 days based on the divested amount of \$ [REDACTED] (Exhibit A, p. 69). Guardian filed a hearing request to dispute the determination regarding the divestment penalty and period. MDHHS later revised the divestment penalty and reduced it to one year, seven months and 17 days (Exhibit A, p. 5).

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 2023), 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*

MDHHS determined that the year of Petitioner's baseline date was 2018 (Exhibit A, p. 69). However, it is unclear from the record why MDHHS determined that the baseline date was in 2018, rather than August 24, 2023, which is the date that Petitioner was admitted into LTC. MDHHS' Hearing Packet included the following explanation, "Previous admission into care 09/07/2018 creates a baseline date of 2018. Transfers that occur on or after a client's baseline date must be considered for divestment" (Exhibit A, p. 4). Based on the evidence provided, MDHHS has not established that it properly determined Petitioner's baseline date. More information is needed regarding Petitioner's "admission into care" in [REDACTED] 2018. It is unclear what type of care MDHHS was referring to in this instance.

Additionally, MDHHS failed to demonstrate that it properly requested verifications from Petitioner and her guardian, pursuant to policies in BAM 130. Policy provides that MDHHS must request verification when required by policy and when information regarding eligibility factors is unclear, inconsistent, incomplete or contradictory. BAM 130 (January 2023), p. 1. The questionable information might be from a client or third party. *Id*. Verification is usually required at application or redetermination. *Id*.

To request verification, MDHHS must send the client a Verification Checklist (VCL), which tells the client what verification is required, how to obtain it and the due date. *Id.*, pp. 3-4. Before determining eligibility, MDHHS must give the client a reasonable opportunity to resolve any discrepancy between the client's statements and information from another source. *Id.*, p. 9. Clients must obtain the verification, but MDHHS must assist the client if the client needs and requests help. *Id.*, p. 4. MDHHS is also required to assist clients in obtaining the verifications if the client indicates the existence of a disability that impairs their ability to gather information. *Id.*, p. 1. For MA, MDHHS must allow the client ten calendar days to provide the verification. *Id.*, p. 8. If the client cannot provide the verification despite a reasonable effort, MDHHS is permitted to extend the time up to two times. *Id*. If neither the client nor the local office can obtain verification despite a reasonable effort, MDHHS must use the best available information. *Id.*, p. 4. If no evidence is available, MDHHS is required to use its best judgment. *Id*. MDHHS sends negative action notices when the client indicates a refusal to provide the requested verifications, or the time period has lapsed. *Id.*, p. 9.

Here, the record shows that MDHHS sent Petitioner a VCL on October 10, 2023 (Exhibit A, p. 29). The VCL requested titles for two vehicles, savings account, cash surrender value of three [REDACTED] life insurance policies, monthly health insurance premiums and how the \$[REDACTED] inheritance received in [REDACTED] 2022 was spent (Exhibit A, p. 29). The VCL indicated that proofs were due by October 20, 2023. It is undisputed that [REDACTED] requested an extension of the verification deadline, which MDHHS granted, however, it is unclear what the new deadline was for the documents. On November 2, 2023, MDHHS sent a Health Care Coverage Determination Notice indicating that MA would be closed on December 1, 2023 (Exhibit A, p. 32). The notice

did not provide a reason for the closure. Also on [REDACTED], 2023, Guardian contacted MDHHS regarding the verifications and the status of Petitioner's MA. This contact with MDHHS shows that Guardian was attempting to comply with MDHHS' requests, however, he needed additional assistance. MDHHS should have attempted to help Guardian at this point and/or should have extended the deadline for verifications again. MDHHS failed to show that it properly did so in this case. Guardian's numerous contacts with MDHHS show that he was making a reasonable effort to comply with the extensive documentation requests. The record also shows that MDHHS failed to adequately inform Guardian what verifications were needed. It indicated that it needed an invoice or proof of purchase for the vehicles (Exhibit A, p. 3); however, only the titles of the vehicles were requested on the VCL (Exhibit A, p. 29). Policy requires MDHHS to tell clients specifically what verification is required and how to obtain the verifications.

Additionally, there are unexplained delays in this case. The record shows that Guardian continued to submit additional documentation that was not processed timely, and it is unclear why there was a delay in referring this matter to the Michigan Office of Administrative Hearings and Rules (MOAHR) after Guardian requested a hearing on March 11, 2024. MOAHR did not receive MDHHS' Hearing Packet regarding the requested hearing until October 22, 2024 (Exhibit A, p. 1).

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 MA divestment penalty.

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 she is subject to a divestment penalty, from the date of admission to a LTC facility, ongoing, requesting additional information and providing assistance 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:

DHHS
Lorraine Massie (Houghton)
Houghton County DHHS
47420 State Hwy M-26 Suite 62
Houghton, MI 49931
MDHHS-906WestHearings@michigan.gov

Interested Parties

BSC1
M. Schaefer
EQAD
MOAHR

Via-First Class Mail:

Petitioner

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Authorized Hearing Rep.

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