



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

MARLON I. BROWN, DPA  
DIRECTOR

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Date Mailed: December 10, 2024  
MOAHR Docket No.: 24-012533  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm**

**HEARING DECISION**

On October 23, 2024, Petitioner ██████████ requested a hearing to dispute a Medical Assistance (MA) determination. As a result, a hearing was scheduled to be held on December 5, 2024. Public assistance hearings are held 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.

The parties appeared for the scheduled hearing. Petitioner’s authorized hearing representative, ██████████, appeared for Petitioner. Respondent Michigan Department of Health and Human Services (Department) had Assistance Payments Supervisor Kimberly Reed and Assistance Payments Worker Pheobe Ginnever appear as its representatives. Neither party had any additional witnesses.

Sworn testimony was provided by both parties, and one exhibit was admitted into evidence. A 49-page packet of documents provided by the Department was admitted collectively as Exhibit A.

**ISSUE**

Did the Department properly determine that Petitioner was subject to a divestment penalty from November 1, 2024, through November 7, 2024?

**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 November 11, 2022, Petitioner was admitted to a long-term care facility.
2. On December 8, 2022, Petitioner was discharged from the long-term care facility. Petitioner moved to an adult foster care home when she was discharged.

3. On December 13, 2022, the Department mailed a health care coverage determination notice to Petitioner to notify her that Medicaid would not pay for her long-term care and home and community-based waiver services from November 11, 2022, through December 14, 2022, due to a divestment.
4. Petitioner did not dispute the December 13, 2022, health care coverage determination notice.
5. Petitioner remained in an adult foster care home until about December 15, 2023. Petitioner's family paid approximately \$16,800.00 for Petitioner's care while she was in an adult foster care home.
6. On or about December 15, 2023, Petitioner was admitted to a hospital. Petitioner remained hospitalized for about two weeks before Petitioner was transferred to a long-term care facility.
7. On December 29, 2023, Petitioner was admitted to a long-term care facility.
8. On October 14, 2024, the Department mailed a benefit notice to Petitioner to notify her that Medicaid would not pay for her long-term care and home and community-based waiver services from November 1, 2024, through November 7, 2024, because she had a divestment penalty that had not been served.
9. Petitioner requested a hearing to dispute the divestment penalty.

### **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 administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The issue here is whether the Department properly imposed the remaining balance of Petitioner's divestment penalty when she was readmitted to a long-term care facility on December 29, 2023. The Department originally imposed Petitioner's divestment penalty from November 11, 2022, through December 14, 2022, but Petitioner was discharged from the long-term care facility before the end of the divestment penalty period. Petitioner was discharged from the long-term care facility on December 8, 2022. Thus, Petitioner only served a portion of her divestment penalty before she was discharged from the long-

term care facility. Petitioner had a balance of seven days that had not been served when she was discharged from the long-term care facility on December 8, 2022. Petitioner asserts that the remainder of her divestment penalty should have been served after she was discharged from the long-term care facility on December 8, 2022, and before she was admitted to a long-term care facility on December 29, 2023, because Petitioner's family paid \$16,800.00 for Petitioner's care in an adult foster care home after she was discharged from the long-term care facility on December 8, 2022, and before she was admitted to a long-term care facility on December 29, 2023.

The applicable policy is BEM 405. It states that the Department must apply the penalty to the months (or days) an individual is eligible for Medicaid and actually in long-term care, PACE, Home Health, Home Help, or the MIChoice Waiver. BEM 405 (July 1, 2024), p. 13. It states that the Department cannot apply the penalty to a period when the individual is not eligible for Medicaid for any reason (that is the case closes for any reason) or is eligible for Medicaid but is not in long-term care, PACE, Home Health, Home Help, or MIChoice Waiver. *Id.* It states the Department must restart the penalty when the individual is again eligible for Medicaid and in long-term care, PACE, Home Health, Home Help, or MIChoice Waiver. *Id.* Thus, a divestment penalty is only applied during the time that an individual is (1) eligible for Medicaid and (2) in long-term care, PACE, Home Health, Home Help, or MIChoice Waiver.

After Petitioner was discharged from the long-term care facility on December 8, 2022, Petitioner continued to be eligible for Medicaid. Since Petitioner remained eligible for Medicaid, the remaining issue is whether Petitioner was in long-term care, PACE, Home Health, Home Help, or the MIChoice Waiver. Petitioner did not present sufficient evidence to establish that she was in PACE, Home Health, Home Help, or the MIChoice Waiver after she was discharged from the long-term care facility on December 8, 2022. Although Petitioner's daughter testified that Petitioner was receiving care in an adult foster care home after she was discharged from the long-term care facility on December 8, 2022, there was no evidence that Petitioner was receiving care through one of the required Medicaid programs (PACE, Home Health, Home Help, or the MIChoice Waiver) after she was discharged from the long-term care facility on December 8, 2022. Therefore, Petitioner's divestment penalty could not be applied to the time that Petitioner was in an adult foster care home.

When Petitioner was admitted to a long-term care facility on December 29, 2023, the Department was required to restart Petitioner's divestment penalty. *Id.* The Department had to provide Petitioner with timely notice that her remaining divestment penalty would be imposed before the Department could begin to impose it. *Id.* at 14. Timely notice means adequate notice which is mailed at least 11 days prior to the effective date of the intended negative action. BPG (February 1, 2024), p. 70.

The Department properly imposed the remaining term of Petitioner's divestment penalty after Petitioner was admitted to a long-term care facility on December 29, 2023. To give Petitioner timely notice, the Department applied Petitioner's divestment penalty beginning

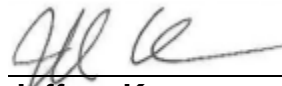
November 1, 2024. Based on the evidence presented, the Department acted in accordance with BEM 405. Therefore, the Department's decision is affirmed.

**DECISION AND ORDER**

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 its policies and the applicable law when it determined that Petitioner was subject to a divestment penalty from November 1, 2024, through November 7, 2024.

**IT IS ORDERED** the Department's decision is **AFFIRMED**.

JK/pe



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**Jeffrey Kemm**  
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**

Shanna Ward  
Osceola-Mecosta County DHHS  
800 Watertower  
Big Rapids, MI 49307  
**MDHHS-Mecosta-Osceola-  
Hearings@michigan.gov**

**Interested Parties**

BSC3  
M. Schaefer  
EQAD  
MOAHR

**Via First Class Mail:**

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

**Authorized Hearing Representative**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]