



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

MARLON BROWN
DIRECTOR

██████████
██████████
██████████, MI ██████████

Date Mailed: March 4, 2025
MOAHR Docket No.: 24-013616
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 February 6, 2025, via teleconference. Petitioner was represented by Attorney Mark Bruggeman, as authorized by Petitioner's Power of Attorney (POA), ██████████ ██████████ Kollette Bordeaux, Assistance Attorney General, represented the Michigan Department of Health and Human Services (MDHHS or Department). Nicholas Herbert, Long-Term Care (LTC) Specialist, appeared as a witness for MDHHS. MDHHS' proposed exhibits were admitted into evidence at the hearing as MDHHS Exhibit A, pp. 1-106. Petitioner's proposed exhibit was admitted into evidence at the hearing as Petitioner Exhibit 1, p. 1.

ISSUE

Did MDHHS properly determine that Petitioner was subject to a 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 August 27, 2024, a purchase agreement was executed for the sale of a 2024 Ford F350 for \$99,665.66 (Exhibit A, p. 15). The purchase agreement indicated that the vehicle was sold to ██████████ ██████████ (Daughter), Petitioner's daughter (Exhibit A, p. 15). The agreement indicated that ██████████ ██████████ (Spouse), Petitioner's Spouse, was the co-signer (Exhibit A, p. 15). Both Spouse and Daughter were listed on the vehicle title issued on September 13, 2024 (Exhibit A, p. 19).

2. On [REDACTED] 2024, Petitioner applied for LTC MA, listing Spouse and declaring one household vehicle (Exhibit A, pp. 7-8). The application indicated that Petitioner was admitted to a nursing facility on August 4, 2024 (Exhibit A, p. 9).
3. On November 27, 2024, MDHHS sent Petitioner a Health Care Coverage Determination Notice indicating that Petitioner was approved for MA with a monthly patient pay amount of \$2,375.00, beginning October 1, 2024, and a monthly patient pay amount of \$1,001.00, beginning November 1, 2024 (Exhibit A, p. 40). The notice indicated that there was a divestment penalty from October 1, 2024 to July 5, 2025 (Exhibit A, p. 40). The notice stated that adding Daughter's name to the title of the vehicle was a divestment of the full purchase price because it was verified that it was purchased solely with Spouse and Petitioner's money (Exhibit A, p. 40).
4. On December 6, 2024, the State of Michigan issued a vehicle title for the vehicle listing Spouse's name as the sole owner (Exhibit A, p. 71).
5. On December 9, 2024, MDHHS sent Petitioner a Health Care Coverage Determination Notice indicating that the divestment penalty period ended effective December 6, 2024, because Daughter's name was removed from the title of the vehicle (Exhibit A, p. 76).
6. On December 10, 2024, Petitioner, by and through his attorney, requested a hearing.

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 (January 2024), p. 1.

In this case, MDHHS determined that Petitioner was eligible for LTC MA with a patient pay amount, subject to a divestment penalty from October 1, 2024 to July 5, 2025, due to adding Daughter's name to the title of a vehicle (Exhibit A, p. 40). MDHHS subsequently ended the divestment penalty on December 6, 2024 because Daughter's name was removed from the vehicle title. Petitioner disputed the divestment penalty. At issue is the divestment penalty from October 1, 2024 to December 6, 2024.

Divestment is a type of transfer of a resource and not an amount of resources transferred. BEM 405 (July 2024), 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.

When a client jointly owns a resource with another person(s), any action by the client or by another owner that reduces or eliminates the client's ownership or control is considered a transfer by the client. *Id.*, p. 3. Policy provides the following examples:

Example: Mr. Jones is applying for MA. Before the look back period he added his sister's name to his bank account. Each is free to withdraw as much money as desired so adding the sister's name did not affect the client's ownership or control. On September 1 the sister withdrew \$10,000 and deposited the money in her own bank account. Mr. Jones is considered to have transferred \$10,000 on September 1, the day he no longer had ownership and control of his money.

Example: Mr. Jones is applying for MA. During the look back period Mr. Jones gave his sister half interest in real estate. His equity value at the time was \$100,000. The ownership arrangement prevents either sibling from selling without the other's permission. Mr. Jones transferred a resource on the day he reduced his ownership and control by giving his sister part ownership. The amount transferred depends on whether his sister is refusing to sell. The transferred amount is:

- \$100,000 if she now refuses to sell.
- \$50,000 if she now agrees to sell.

Exception: No penalty is imposed if the parties involved verify that the resource transferred actually belonged solely to the person to whom it was transferred. BEM 405 (July 2024), p. 4.

Transfers exclusively for a purpose other than to qualify or remain eligible for MA are not considered divestments. BEM 405, p. 11. Preservation of an estate for heirs or to avoid probate court is not acceptable as another purpose. *Id.*, p. 12.

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).

Here, it is undisputed that the vehicle was purchased with Petitioner and Spouse's money. Additionally, it is undisputed that Daughter's name was on the title after the initial purchase. Petitioner, by and through his attorney, argued that there was no transfer of assets. That Spouse bought the truck for herself, using her money, and that Daughter was on the title as a matter of convenience to bypass probate in the event of Spouse's death. Petitioner asserted that because there had been no transfer of an asset for less than fair market value, there was no divestment.

MDHHS properly determined that Petitioner's baseline date was October 1, 2024, because that was the date that Petitioner became eligible for MA and was in LTC (Exhibit A, p. 104). The record shows that Petitioner entered LTC on August 4, 2024. MDHHS further determined that the purchase of the vehicle by Spouse was within the look-back period. MDHHS argued that there was a divestment, because putting Daughter on the title of the vehicle reduced Spouse's ownership and control of the vehicle. MDHHS argued that Spouse would have been unable to sell the vehicle without Daughter's signature, and thus, the divestment was for the total value of the truck, which was purchased for \$99,665.66.

The record shows that Spouse's name was present on the title at all relevant times. No evidence was presented to show that Spouse transferred cash to Daughter to buy the vehicle or that the vehicle that was purchased was solely for Daughter's use. Under MA policy, one vehicle is excluded per household and not considered a countable asset. BEM 400 (October 2024), p. 41. Accepting Petitioner's contention that the dealership made a mistake regarding the names on the purchase agreement, Spouse diminished her ownership and control of the vehicle by adding Daughter's name to the title. Similar to the example above regarding real estate, Spouse would have needed Daughter's permission to sell the car.

Petitioner asserted that the vehicle was for Spouse's use only and that Daughter was listed as a co-owner as a matter of convenience, so that the vehicle would transfer to Daughter in the event of Spouse's death. Transfers exclusively for a purpose other than to qualify or remain eligible for MA are not considered divestments. BEM 405, p. 11. However, policy specifically provides that preservation of an estate for heirs or to avoid probate is not an acceptable purpose. BEM 405, p. 12. Petitioner did not present an alternative purpose other than to avoid probate. Given that this is not an acceptable purpose, and no other purpose was offered, the undersigned Administrative Law Judge cannot find that the transfer was not a divestment on these grounds.

Thus, the record shows that MDHHS properly determined that there had been a divestment, because Spouse reduced her ownership and control of the vehicle by adding Daughter's name to the title. However, MDHHS did not assert that Daughter was

withholding her permission to sell the vehicle. In the example involving real estate, the amount transferred was dependent on whether the second owner agreed to sell. No evidence or testimony was presented to show that Daughter was unwilling to sell. In fact, the subsequent act of removing Daughter's name from the title demonstrates a high likelihood that Daughter would have been willing to sell. No evidence was presented that MDHHS attempted to verify whether Daughter was willing to sell or to transfer her ownership prior to determining the divestment amount. MDHHS is required to verify factors involving eligibility whenever information is unclear or in dispute. See *generally*, BAM 130 (May 2024).

However, the subsequent return of the asset renders the question of whether Daughter would have been willing to sell the vehicle moot. If MDHHS determined that the amount of the transfer was half of the value of the vehicle, or \$49,832.83, Petitioner would still be subject to a divestment penalty of four months and 17 days. This divestment period exceeds the divestment period imposed in this case. Removing Daughter's name from the vehicle constitutes a return of the asset. Pursuant to policy, MDHHS is required to cancel a divestment penalty if the transferred resource is returned and retained by the individual. BEM 405, p. 15. MDHHS did so in this case and the divestment penalty was cancelled, effective December 6, 2024. Because the divestment penalty imposed is less than the divestment penalty that would have been imposed if MDHHS calculated the amount based on Daughter's willingness to sell, MDHHS' error in failing to verify the information is inconsequential.

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 Department policy when it determined that Petitioner was subject to a divestment penalty, and subsequently canceled the divestment penalty when the asset was returned.

DECISION AND ORDER

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



LJ/nr

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 :

Counsel for Respondent

Kollette R. Bordeaux
Michigan Department of Attorney
AG-HEFS-MAHS@michigan.gov

Interested Parties

BSC4
M. Schaefer
EQAD
MOAHR

DHHS

Jeffrey Cook
Lenawee County DHHS
MDHHS-Lenawee-Hearings@michigan.gov

Via-First Class Mail :

Petitioner

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

Counsel for Petitioner

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