



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]  
[REDACTED]

Date Mailed: April 3, 2025  
MOAHR Docket No.: 24-013778  
Agency No.: [REDACTED]  
Petitioner: [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 March 5, 2025, from Lansing, Michigan. The Petitioner was represented by Attorney Terri Winegarden. [REDACTED] and [REDACTED] testified for the Petitioner. The Department of Health and Human Services (Department) was represented by Assistant Attorney General Melissa Bianchi. Amy Assante Long Term Care Specialist appeared and testified for the Department. Department Exhibit 1, pp. 1-45 was received and admitted. Petitioner Exhibit A, pp. 1-99 was received and admitted.

**ISSUE**

Did the Department properly determine that Petitioner divested assets when she transferred ownership interest in three real estate parcels to her son?

**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 [REDACTED] 2022, Petitioner transferred 3 real estate parcels to a trust for the benefit of her son [REDACTED]. These transfers were reported to the Department at that time.
2. On September [REDACTED] 2024, a Health Care Coverage Determination Notice was sent to Petitioner informing her that she was approved for MA with a divestment penalty period from October 1, 2024, through April 16, 2027.

3. On December [REDACTED] 2024, Petitioner requested hearing disputing the determination of divestment and imposition of the divestment penalty period.
4. On January [REDACTED] 2012, [REDACTED] was found to be disabled by the Social Security Administration with an onset date of September 2011.
5. [REDACTED] credibly testified at hearing that [REDACTED] has not had medical improvement, and he continues to be disabled.

### **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.

#### **Medicaid (MA) ONLY**

Divestment results in a penalty period in MA, not ineligibility. Divestment policy does not apply to Qualified Disabled Working Individuals (QDWI); see Bridges Eligibility Manual (BEM) 169. Divestment is a type of transfer of a resource and not an amount of resources transferred. Divestment means the transfer of a resource (see resource defined in this item and in glossary) by a client or his spouse that are all the following: • Is within a specified time; see look back period in this item. • Is a transfer for less than fair market value; see definition in glossary. • Is not listed under transfers that are not divestment in this item. BEM 405

#### **Transfers Involving Child**

A transfer to the client's blind or disabled (see BEM 260) child, regardless of the child's age or marital status, are not divestment. This includes transfers to a trust established SOLELY FOR THE BENEFIT OF the child. BEM 405

#### **Recently Eligible for SSI**

If SSI eligibility based on disability or blindness was terminated due to financial factors, continue medical eligibility for MA. Medical development and DDS certification are not initially required. Schedule a medical review 12 months from the date of SSI termination; see BAM 815. BEM 260

In this case, Petitioner's son [REDACTED] was found to be disabled by the Social Security Administration in January 2012 with an onset date of September 2011. He received SSI for a period of time but then began receiving social security survivor's benefits under his father's account. That change was because it was financially beneficial to [REDACTED] [REDACTED] and not because he was found to no longer be disabled. No determination has been made that [REDACTED] [REDACTED] is not disabled. [REDACTED] [REDACTED] credibly testified at hearing that [REDACTED] [REDACTED] currently has the same diagnoses that he had in 2011 and he has had no medical improvement. Petitioner submitted medical documentation in support of their contention that [REDACTED] [REDACTED] continues to be disabled. (Ex. A, pp. 46-56) The Department presented no evidence to establish that [REDACTED] [REDACTED] is not disabled.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Petitioner divested assets by transferring her interest in three parcels of real property to her disabled son [REDACTED] [REDACTED]


### **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. Lift the finding of divestment and erase the divestment penalty period.
2. Award Petitioner MA-LTC benefits going back to the month of application if she is found otherwise 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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