



Date Mailed: May 6, 2025

Docket No.: 25-008181

Case No.: [REDACTED]

Petitioner: [REDACTED]

[REDACTED]

This is an important legal document. Please have someone translate the document.

هذه وثيقة قانونية مهمة. يرجى أن يكون هناك شخص ما يترجم المستند.

এটি একটি গুরুত্বপূর্ণ আইনি ডকুমেন্ট। দয়া করে কেউ দস্তাবেজ অনুবাদ করুন।

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Ky është një dokument ligjor i rëndësishëm. Ju lutem, kini dikë ta përktheni dokumentin.

### 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; 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 via telephone conference on March 20, 2025. Petitioner was represented by Gregory Hodge, Attorney. Michigan Department of Health and Human Services (MDHHS or Department) was represented by Melissa Bianchi, Assistant Attorney general (AAG). Samantha Johnson, Eligibility Specialist, appeared as a witness for the Department.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-50 and Petitioner's additional documentation was admitted as Exhibit 1, pp. 1-38.

### ISSUE

Did the Department properly determine Petitioner's eligibility for Medical Assistance (MA)?

### 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 [REDACTED] 2024, a Hearing Decision was issued for Michigan Office of Administrative Hearings and Rules (MOAHR) Docket No. 24-010742 reversing a

previous MA eligibility determination and ordering the Department to redetermine Petitioner's eligibility for MA for an April [REDACTED] 2024 application. (Exhibit A, pp. 7-12)

2. On April [REDACTED] 2024, Petitioner's half of funds gifted to her son was \$ [REDACTED] which the Department determined was a divestment and would result in a divestment penalty from January 1, 2025 to March 1, 2025. Petitioner's husband was assessed a divestment penalty for the other half of this gift. (Exhibit A, pp. 1, 24-25, and 32)
3. On January [REDACTED] 2025, a Health Care Coverage Determination Notice was issued to Petitioner, in part stating Petitioner was approved for full MA coverage from July 1, 2024 to December 31, 2024 and that she would have a patient pay amount of \$ [REDACTED] monthly starting January 1, 2025. Petitioner was also notified that the Department determined she would have a divestment penalty from January 1, 2025 through March 1, 2025. (Exhibit A, pp. 13-17)
4. The Department subsequently determined that renovations totaling \$ [REDACTED] completed at the property on [REDACTED] [REDACTED] was a divestment of assets because the property was not Petitioner's residence, therefore items purchased for the house do not qualify for the household goods exemption. (Exhibit A, pp. 23-24, 28-30, 33, and 36-39)
5. On February [REDACTED] 2025, a Health Care Coverage Determination Notice was issued to Petitioner, in part stating the Department determined she would have a divestment penalty from January 1, 2025 through September 12, 2025 based on a total divestment of \$ [REDACTED] (gift to son of \$ [REDACTED] and renovations to [REDACTED] Ave property of \$ [REDACTED] (Exhibit A, pp. 18-21)
6. Petitioner's son made payments to the Long Term Care (LTC) facility on Petitioner's behalf. This included a payment on July [REDACTED] 2024 of \$ [REDACTED] and a payment of \$ [REDACTED] on September [REDACTED] 2024. (Exhibit A, pp. 34 and 46-50; Exhibit 1, pp. 9-10)
7. The Department determined that the payments Petitioner's son made to the LTC facility did not cure the divestment of the gifted funds because Petitioner did not make the payments herself using her own money. The funds had to be returned to Petitioner in order to cure the divestment. (Exhibit A, pp. 1 and 34-35)
8. On February [REDACTED] 2025, a hearing request was filed on Petitioner's behalf contesting the divestment penalty determinations totaling \$ [REDACTED] and penalty period of January 1, 2025 to September 12, 2025. (Exhibit A, pp. 3-33; Exhibit 1, pp. 11-38)

### **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).

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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.

BEM 405 addresses MA Divestment. In part, this policy states:

Divestment results in a penalty period in MA, **not** ineligibility.

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Divestment means a transfer of a resource (see *resource defined* in this item and in glossary) by a client or his spouse that are all of 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 in this item under *transfers* that are not divestment.

BEM 405, February 1, 2025, p. 1.

## **TRANSFER OF A RESOURCE**

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. **Not** all transfers are divestment. Examples of transfers include:

- Selling an asset for fair market value (not divestment).
- Giving an asset away (divestment).
- Refusing an inheritance (divestment).
- Payments from a MEDICAID TRUST that are not to, or for the benefit of, the person or his spouse; see BEM 401 (divestment).
- Putting assets or income in a trust; see BEM 401.
- Giving up the right to receive income such as having pension payments made to someone else (divestment).
- Giving away a lump sum or accumulated benefit (divestment).

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- Buying an annuity that is not actuarially sound (divestment).
  - Giving away a vehicle (divestment).
  - Putting assets or income into a Limited Liability Company (LLC).
  - Purchasing an asset which decreases the group's net worth and is not in the group's financial interest (divestment)

BEM 405, pp. 2-3.

### **Transfers by Representatives**

Treat transfers by any of the following as transfers by the client or spouse.

- Parent for minor.
- Legal guardian.
- Conservator.
- Court or administrative body.
- Anyone acting in place of, on behalf of, at the request of or at the direction of the client or the client's spouse.

BEM 405, p. 3.

The look back period is 60 months prior to the baseline date. A person's baseline date is the first date that the client was eligible for Medicaid and one of the following: in LTC; approved for the waiver, see BEM 106; eligible for Home Health services; or eligible for Home Help services. BEM 405, pp. 5-6.

### **LESS THAN FAIR MARKET VALUE**

Less than fair market value means the compensation received in return for a resource was worth less than the fair market value of the resource. 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 (see glossary).

BEM 405, p. 7.

The BEM 405 policy lists several types of transfers that are not divestment, which includes asset conversion:

#### **Asset Conversion**

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Converting an asset from one form to another of equal value is not divestment even if the new asset is exempt. Most purchases are conversions.

Example: Using \$5,000 from savings to buy a used car priced at \$5,000 is conversion for equal value.

Example: Trading a boat worth about \$8,000 for a car worth about \$8,000 is conversion for equal value.

Payment of expenses such as one's own taxes or utility bills is also not divestment.

BEM 405, p. 11.

### **Spouses Sharing a Penalty**

Penalize a client if her or his spouse divests. The penalty is imposed on whichever spouse is in a penalty situation. If both spouses are in a penalty situation, the penalty period (or any remaining part) must be divided between them.

BEM 405, p. 16.

### **Resources Returned**

Cancel a divestment penalty if either of the following occurs before the penalty is in effect:

- All the transferred resources are returned and retained by the individual.
- Fair market value is paid for the resources.

Recalculate the penalty period if either of the following occurs while the penalty is in effect:

- All the transferred resources are returned.
- Full compensation is paid for the resources.

Use the same per diem rate originally used to calculate the penalty period.

Once a divestment penalty is in effect, return of, or payment for, resources cannot eliminate any portion of the penalty period already past. However, recalculate the penalty period. The divestment penalty ends on the later of the following:

- The end date of the new penalty period.
- The date the client notified you that the resources were returned or paid for.

BEM 405, pp. 16-17.

Pursuant to BEM 400, household goods are excluded from the countable assets for SSI-related MA. BEM 400, February 1, 2025, p. 41. The policy defines household goods as follows:

### **SSI-Related MA Only**

**Household Goods-** those items of personal property found in or near the home. Household goods are needed for maintenance, use, and occupancy of the premises as a home. Items are considered a person's household goods when they are currently used, or in the case of an institutionalized person, were previously used by the person in his or her own residence. Examples include furniture, carpets, and dishes.

BEM 400, pp. 40-41.

In this case, the Department determined Petitioner would have a divestment penalty from January 1, 2025 through September 12, 2025 based on a total divestment of \$ [REDACTED] (gift to son of \$ [REDACTED] and renovations to [REDACTED] [REDACTED] property of \$ [REDACTED] (Exhibit A, pp. 18-21).

The first portion of the divestment penalty was based on the gift to the son. On April [REDACTED] 2024, Petitioner's half of funds gifted to her son was \$ [REDACTED] which the Department determined was a divestment and would result in a divestment penalty from January 1, 2025 to March 1, 2025. Petitioner's husband was assessed a divestment penalty for the other half of this gift. (Exhibit A, pp. 1, 24-25, and 32). Pursuant to the above cited BEM 405 policy, it was appropriate for the Department to split the divestment penalty in half between Petitioner and her husband for the funds gifted to their son.

Petitioner asserts that the son returned the funds and cured the divestment by paying for Petitioner's care. (Exhibit A, p. 6). Petitioner's son made payments to the LTC facility on Petitioner's behalf. This included a payment on July [REDACTED] 2024 of \$ [REDACTED] and a payment of \$ [REDACTED] on September [REDACTED] 2024. (Exhibit A, pp. 34 and 46-50; Exhibit 1, pp. 9-10). Regarding resources returned, the BEM 405 policy states that the Department is to cancel a divestment penalty if either of the following occurs before the penalty is in effect: (1) all the transferred resources are returned and retained by the individual; (2) fair market value is paid for the resources. The funds were paid to the LTC facility, not returned and retained by Petitioner. Therefore, the divestment penalty cannot be cancelled under the first provision. However, it does not appear that the Department

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considered the second scenario, whether fair market value was paid for the resources. The BEM 405 policy states that less than fair market value means the compensation received in return for a resource was worth less than the fair market value of the resource. The payments Petitioner's son made to the LTC facility for Petitioner's care were greater than the amount gifted to Petitioner's son. Accordingly, it cannot be said that the compensation Petitioner received in return for the gifted funds was worth less than the fair market value of the gifted funds. Because Petitioner received compensation that was at least fair market value for the gift prior to the start of the divestment penalty, that portion of the divestment penalty should be canceled pursuant to the BEM 405 policy.

The second portion of the divestment penalty was based on the Department's determination that renovations totaling \$██████████ completed at the property on █████ █████ was a divestment of assets because the property was not Petitioner's residence, therefore items purchased for the house do not qualify for the household goods exemption. (Exhibit A, pp. 23-24, 28-30, 33, and 36-39). Petitioner asserts that the replacement of the septic field and new windows and siding were necessary updates and reasonable repairs to any home, especially when that home is going to be the place where an elderly person is returning to after a rehab stay. (Exhibit A, p. 6).

The BEM 400 policy addressing household goods relates to exclusion from the countable assets for SSI-related MA, not divestment. Accordingly, if something did not fall within the household goods exclusion, it could potentially affect MA eligibility related to whether there were excess assets.

Pursuant to the BEM 405 policy, in order for there to have been divestment, there must have been a transfer of a resource for less than fair market value, and the transfer is not listed in the policy as a transfer that is not divestment. The evidence does not support that the renovations were a transfer for less than fair market value. Rather, it appears that the renovations were an asset conversion, which is listed in the BEM 405 policy as a transfer that is not divestment. The BEM 405 policy states that converting an asset from one form to another of equal value is not divestment and most purchases are conversions. Petitioner owns the property on █████ █████ where the renovations occurred. There was no evidence that Petitioner sold or gave away a resource when she used funds to pay for the renovations on the property she owns, or that she paid more than fair market value for the replacement of the septic field and new windows and siding. There was no evidence presented that the renovation purchases decreased Petitioner's net worth or was not in her financial interest. Accordingly, the available evidence does not support that the renovations totaling \$██████████ completed at the property on █████ █████ was a divestment of assets.

### **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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's eligibility for MA.

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. Redetermine Petitioner's eligibility for MA for the April ■ 2024 application in accordance with Department policy.



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**COLLEEN LACK**  
**ADMINISTRATIVE LAW JUDGE**

**APPEAL RIGHTS:** Petitioner may appeal this Hearing Decision to the circuit court. Rules for appeals to the circuit court can be found in the Michigan Court Rules (MCR), including MCR 7.101 to MCR 7.123, available at the Michigan Courts website at [courts.michigan.gov](https://courts.michigan.gov). The Michigan Office of Administrative Hearings and Rules (MOAHR) cannot provide legal advice, but assistance may be available through the State Bar of Michigan at <https://lrs.michbar.org> or Michigan Legal Help at <https://michiganlegalhelp.org>. A copy of the circuit court appeal should be sent to MOAHR. A circuit court appeal may result in a reversal of the Hearing Decision.

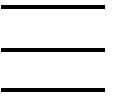
Either party who disagrees with this Hearing Decision may also send a written request for a rehearing and/or reconsideration to MOAHR within 30 days of the mailing date of this Hearing Decision. The request should include Petitioner's name, the docket number from page 1 of this Hearing Decision, an explanation of the specific reasons for the request, and any documents supporting the request. The request should be sent to MOAHR

- by email to [MOAHR-BSD-Support@michigan.gov](mailto:MOAHR-BSD-Support@michigan.gov), **OR**
- by fax at (517) 763-0155, **OR**
- by mail addressed to  
Michigan Office of Administrative Hearings and Rules  
Rehearing/Reconsideration Request  
P.O. Box 30639  
Lansing Michigan 48909-8139

Documents sent via email are not secure and can be faxed or mailed to avoid any potential risks. Requests MOAHR receives more than 30 days from the mailing date of this Hearing Decision may be considered untimely and dismissed.

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