



Date Mailed: May 7, 2025

Docket No.: 25-009358

Case No.: [REDACTED]

Petitioner: [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।

Este es un documento legal importante. Por favor, que alguien traduzca el documento.

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

HEARING DECISION

On March 5, 2025, Petitioner [REDACTED] [REDACTED] requested a hearing to dispute a Medicaid determination. As a result, a hearing was scheduled to be held on April 29, 2025. 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; 45 CFR 205.10; and Mich Admin Code, R 792.11002.

The parties appeared for the scheduled hearing. Attorney Janet Brazelton represented Petitioner, and [REDACTED] [REDACTED] appeared as Petitioner's witness. Assistant Attorney General Scott Rothermel represented Respondent Michigan Department of Health and Human Services (Department), and Long-Term Care Eligibility Specialist Ann Miller appeared as Respondent's witness. There were no other participants.

Both parties provided sworn testimony, and one exhibit was admitted into evidence. A 303-page packet of documents provided by the Department was admitted collectively as Exhibit A.

ISSUE

Did the Department properly determine Petitioner's divestment penalty?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

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1. On September █ 2020, Petitioner married █ █
 2. In October 2020, Petitioner became ill and began to require care.
 3. Petitioner retired from his employment to help care for Petitioner.
 4. On August █ 2021, Petitioner was admitted to a long-term care facility.
 5. Petitioner had full-coverage Medicaid through the Healthy Michigan Plan at the time she was admitted to the long-term care facility, and the Department could not close Petitioner's Medicaid due to policies put in place as a result of the COVID-19 pandemic.
 6. In August 2021, █ █ deposited \$█ in an individual retirement account (IRA) at Edward Jones. The money that █ █ deposited in the IRA was money he received from his employment retirement account that he rolled over to an IRA.
 7. The money that █ █ deposited in the IRA was invested in various funds, and the value changed based on the gains and losses of the invested funds.
 8. █ █ made the following withdrawals from his IRA:
 - a. In August 2021, \$█ was withdrawn. Of this amount, \$█ was distributed to █ █ \$█ was withheld for state taxes, and \$█ was withheld for federal taxes.
 - b. In September 2021, \$█ was withdrawn. Of this amount, \$█ was distributed to █ █ \$█ was withheld for state taxes, and \$█ was withheld for federal taxes.
 - c. In October 2021, \$█ was withdrawn. Of this amount, \$█ was distributed to Jesse Orosco, \$█ was withheld for state taxes, and \$█ was withheld for federal taxes.
 - d. In November 2021, \$█ was withdrawn. Of this amount, \$█ was distributed to █ █ \$█ was withheld for state taxes, and \$█ was withheld for federal taxes.
 - e. In December 2021, \$█ was withdrawn. Of this amount, \$█ was distributed to █ █ \$█ was withheld for state taxes, and \$█ was withheld for federal taxes.
 - f. In January 2022, \$█ was withdrawn. Of this amount, \$█ was distributed to █ █ █ was withheld for state taxes, and \$█ was withheld for federal taxes.

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- g. In February 2022, \$[REDACTED] was withdrawn. Of this amount, \$[REDACTED] was distributed to [REDACTED] [REDACTED] \$[REDACTED] was withheld for state taxes, and \$[REDACTED] was withheld for federal taxes.
- h. In March 2022, \$[REDACTED] was withdrawn. Of this amount, \$[REDACTED] was distributed to [REDACTED] [REDACTED] \$[REDACTED] was withheld for state taxes, and \$[REDACTED] was withheld for federal taxes.
- i. In April 2022, \$[REDACTED] was withdrawn. Of this amount, \$[REDACTED] was distributed to [REDACTED] [REDACTED] \$[REDACTED] was withheld for state taxes, and \$[REDACTED] was withheld for federal taxes.
- j. In May 2022, \$[REDACTED] was withdrawn. Of this amount, \$[REDACTED] was distributed to [REDACTED] [REDACTED] \$[REDACTED] was withheld for state taxes, and \$[REDACTED] was withheld for federal taxes.
- k. In June 2022, \$[REDACTED] was withdrawn. Of this amount, \$[REDACTED] was distributed to [REDACTED] [REDACTED] \$[REDACTED] was withheld for state taxes, and \$[REDACTED] was withheld for federal taxes.
- l. In July 2022, \$[REDACTED] was withdrawn. Of this amount, \$[REDACTED] was distributed to [REDACTED] [REDACTED] and \$[REDACTED] was withheld for federal taxes.
9. On August [REDACTED] 2021, [REDACTED] [REDACTED] purchased a 2015 Lexus GS 350 for \$[REDACTED] [REDACTED] [REDACTED] paid \$[REDACTED] down, and he financed the remaining \$[REDACTED]
10. On September [REDACTED] 2021, [REDACTED] [REDACTED] withdrew \$[REDACTED] from his Chase bank account.
11. On February [REDACTED] 2022, [REDACTED] [REDACTED] traded in the 2015 Lexus GS 350, and he purchased a 2020 Ram 1500 for \$[REDACTED] At the time, the loan on the 2015 Lexus GS 350 was paid off. [REDACTED] [REDACTED] received \$[REDACTED] for the 2015 Lexus GS 350, he paid \$[REDACTED] down, and he financed the remaining \$[REDACTED]
12. On March [REDACTED] 2022, [REDACTED] [REDACTED] transferred \$[REDACTED] from his Chase bank account to pay a loan for account xxxx5810.
13. On July [REDACTED] 2022, [REDACTED] [REDACTED] IRA at Edward Jones was withdrawn to a \$0.00 balance.
14. On September [REDACTED] 2022, [REDACTED] [REDACTED] purchased a 1987 manufactured home for \$[REDACTED] [REDACTED] [REDACTED] paid cash for the purchase.
15. On October 4, 2024, the Department initiated a redetermination of Petitioner's Medicaid eligibility. The Department mailed a long-term care Medicaid redetermination notice to Petitioner. This document instructed Petitioner to return a form to the Department by November 1, 2024, to renew her Medicaid eligibility.

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16. On November █ 2024, Petitioner submitted an assets declaration form and a Medicaid application to the Department.
 17. On December █ 2024, the Department mailed a verification checklist to Petitioner to obtain additional information to determine Petitioner's Medicaid eligibility. The verification checklist instructed Petitioner to provide various documents, including proof of assets and proof of transfers. The verification checklist stated in part, "we need . . . Edward Jones statements for account ending 9515 from 8/1/2021-11/30/2024. Please provide an explanation for withdrawals from this account that tells where funds were deposited and how funds were spent. We also need verification that confirms where funds were deposited (such as bank statements and also how funds were spent/who funds were spent on)."
 18. █ █ responded to the Department's verification checklist with the documents requested. █ █ was unable to explain all the withdrawals from his accounts, and he was unable to provide proof of how he spent the money he withdrew from his IRA. █ █ provided records to show that he purchased the 2015 Lexus GS 350, the 2020 Ram 1500, and the 1987 manufactured home. █ █ asserted that he paid \$█ to purchase a Jeep for Petitioner's son, he gave Petitioner's grandchildren gifts totaling \$█ he gave Petitioner's mother \$█ and he used the remaining money to pay for car repairs, health insurance premiums, rent, furniture, tools, other bills, and other living expenses.
 19. The Department completed an initial asset assessment. The Department determined that Petitioner and █ █ had countable assets of \$█ and the Department determined that the protected spousal amount was \$█
 20. On January █ 2025, the Department mailed an initial asset assessment notice to Petitioner to notify her that the protected spousal amount was \$█
 21. The Department reviewed Petitioner's case and determined that the \$█ that █ █ deposited in the IRA at Edward Jones in August 2021 was a divestment. The Department determined that the money deposited in the IRA was a divestment because █ █ depleted all the funds in the account, and Petitioner was unable to provide sufficient proof to establish how the funds were used.
 22. On January █ 2025, the Department mailed a health care coverage determination notice to Petitioner to notify her that Medicaid would not pay for her long-term care from February 1, 2025, through August 5, 2026, due to a \$█ divestment.
 23. 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
25-009358

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 is known as Medical Assistance (MA). The 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.

Petitioner asserted that the Department did not determine her Medicaid eligibility timely, and this caused Petitioner to miss the opportunity to take appropriate actions to ensure her eligibility. Therefore, Petitioner asserted that she should not lose her Medicaid coverage. Although the usual procedure for the Department is to review Medicaid eligibility at the time of admission to a long-term care facility, and the Department did not review Petitioner's Medicaid eligibility at the time she was admitted to a long-term care facility, the Department acted in accordance with the applicable policies at the time.

Petitioner was admitted to a long-term care facility on August [REDACTED] 2021, and Petitioner had full-coverage Medicaid through the Healthy Michigan Plan at the time. Due to policies put in place as a result of the COVID-19 pandemic, the Department could not close Petitioner's Medicaid when she was admitted to the long-term care facility. The Department was essentially prohibited from reviewing Petitioner's Medicaid eligibility until after the public health emergency ended on May 11, 2023. Accordingly, the Department continued to provide full-coverage Medicaid for Petitioner, regardless of whether she was eligible for the Medicaid coverage. After the public health emergency ended, the Department began to review Medicaid eligibility. The Department initiated a review of Petitioner's Medicaid eligibility in November 2024, and the Department determined that Petitioner was ineligible for Medicaid coverage due to a divestment penalty. Although the Department did not review Petitioner's Medicaid eligibility at the time she was admitted to the long-term care facility, the Department acted in accordance with the policies that were in effect at the time, and the Department initiated a review once it was able to. Thus, the Department determined Petitioner's Medicaid eligibility in a timely manner under the circumstances.

When the Department determined Petitioner's Medicaid eligibility, the Department determined that Petitioner was subject to a divestment penalty for a \$[REDACTED] divestment. Petitioner is disputing the divestment penalty. The relevant policy is BEM 405, which is the policy on Medicaid divestment. The Medicaid divestment rule is that a transfer of a resource within the look back period for less than fair market value is a divestment, unless it is specifically listed as a transfer that is not a divestment in the policy. BEM 405 (January 1, 2024), p. 1. This rule is derived from 42 USC 1396p(c), which requires a State plan for Medicaid to provide a Medicaid divestment rule. The consequence of a Medicaid divestment is a penalty period during which Medicaid will not pay for long-term care costs, home and community-based waiver services, home help,

25-009358

and home health. *Id.* The Department determined that the \$[REDACTED] that Petitioner's spouse deposited in an IRA at Edward Jones in August 2021 was a divestment.

Based on the evidence presented, the Department did not properly determine the divestment amount. The Department improperly determined that the entire \$[REDACTED] that Petitioner's spouse deposited in the IRA was a divestment. Petitioner provided the Department with sufficient documentation for the Department to determine how much money Petitioner's spouse withdrew from his IRA and how Petitioner's spouse spent the majority of the money. The documentation showed that Petitioner's spouse received a total of \$[REDACTED] from his IRA from August 2021 through July 2022 after taxes were withheld from his withdrawals. The documentation showed that Petitioner's spouse spent \$[REDACTED] to purchase a 2015 Lexus GS 350, the documentation showed that Petitioner's spouse spent \$[REDACTED] to purchase a 2020 Ram 1500, and the documentation showed that Petitioner's spouse gifted \$[REDACTED]

Petitioner provided statements for Petitioner's spouse's IRA for the entire time that the account was open. Those statements showed that Petitioner's spouse withdrew a total of \$[REDACTED] from his IRA from August 2021 through July 2022. Of this amount, \$[REDACTED] was distributed to Petitioner's spouse, \$[REDACTED] was withheld for state taxes, and \$[REDACTED] was withheld for federal taxes. Thus, only \$[REDACTED] was distributed to Petitioner's spouse from the IRA.

The documents that Petitioner provided show that Petitioner's spouse paid \$[REDACTED] to purchase the 2015 Lexus GS 350. Petitioner provided records for her spouse's purchases of the 2015 Lexus GS 350 and the 2020 Ram 1500. Petitioner also provided her spouse's bank statements that covered the time around the purchases. When the records and the bank statements are viewed together, they show that Petitioner's spouse paid \$[REDACTED] to purchase the 2015 Lexus GS 350. The August [REDACTED] 2021, vehicle order form for the 2015 Lexus GS 350 shows that Petitioner's spouse paid \$[REDACTED] down at the time of purchase, and the remaining balance of \$[REDACTED] was financed. Petitioner's spouse's bank statements show that Petitioner's spouse withdrew \$[REDACTED] from his bank account on September [REDACTED] 2021. Lastly, the February [REDACTED] 2022, vehicle purchase agreement for the 2020 Ram 1500 shows that Petitioner's spouse traded in the 2015 Lexus GS 350 lien free. Thus, based on the documents that Petitioner provided, it can reasonably be concluded that Petitioner's spouse paid \$[REDACTED] down at the time he purchased the 2015 Lexus GS 350 on August [REDACTED] 2021, and then he withdrew \$[REDACTED] from his bank account on September [REDACTED] 2021, to pay off the vehicle.

The documents that Petitioner provided show that Petitioner's spouse paid \$[REDACTED] to purchase a 2020 Ram 1500. Petitioner provided records for her spouse's purchase of the 2020 Ram 1500, and Petitioner also provided her spouse's bank statements that covered the time around the purchase. When the purchase record and the bank statements are viewed together, they show that Petitioner's spouse paid \$[REDACTED] to purchase the 2020 Ram 1500. The February [REDACTED] 2022, vehicle purchase agreement shows that Petitioner's spouse paid \$[REDACTED] down at the time of purchase, and the remaining balance of \$[REDACTED] was financed. Petitioner's spouse's bank statements show that Petitioner's spouse made electronic payments totaling \$[REDACTED] on March [REDACTED]

25-009358

2022, to pay a loan. The payments equaled exactly \$10,000.00 less than the \$ [REDACTED] balance that was financed, and the timing of the payments were consistent with Petitioner's purchase of the 2015 Lexus GS 350 because Petitioner financed the purchase on the 2015 Lexus GS 350 and then withdrew funds approximately two weeks later to pay off the balance that was financed. It can reasonably be concluded that the \$ [REDACTED] payments were made towards the 2020 Ram 1500 based on the amount of the payments and the timing of the payments. Thus, based on the documents that Petitioner provided, it can reasonably be concluded that Petitioner's spouse paid \$ [REDACTED] down at the time he purchased the 2020 Ram 1500 on February 21, 2022, and then he made electronic payments totaling \$ [REDACTED] on March 4, 2022, towards the balance that was financed to purchase the vehicle.

The documents that Petitioner provided show that Petitioner's spouse gifted \$ [REDACTED] Petitioner provided the Department with a document called "explanation of spending: Edward Jones (7/2021-7/2022)" in which Petitioner's spouse asserted that he made gifts totaling \$ [REDACTED] Petitioner's spouse paid \$ [REDACTED] to purchase a Jeep for Petitioner's son, he gave Petitioner's grandchildren gifts totaling \$ [REDACTED] and he gave Petitioner's mother \$ [REDACTED]

Petitioner did not provide sufficient documentation to establish how Petitioner's spouse spent the remaining \$ [REDACTED] that was distributed to him from his IRA. Petitioner's spouse asserted that he used the money for car repairs, health insurance premiums, rent, furniture, tools, other bills, and other living expenses. It is reasonable to conclude that Petitioner's spouse would have spent \$ [REDACTED] from August 2021 through July 2022 to pay those expenses.

In summary, Petitioner's spouse received \$ [REDACTED] from his IRA, Petitioner's spouse spent \$ [REDACTED] to purchase a 2015 Lexus GS 350, Petitioner's spouse spent \$ [REDACTED] to purchase a 2020 Ram 1500, Petitioner's spouse gifted \$ [REDACTED] and Petitioner's spouse spent \$ [REDACTED] on other purchases and living expenses. The total amount that Petitioner's spouse divested was only \$ [REDACTED] because the amount that Petitioner's spouse gifted was the only transfer that was for less than fair market value. The Department did not properly determine the divestment penalty because the Department determined that \$ [REDACTED] was divested. The Department should have determined that only \$ [REDACTED] was divested.


Based on the \$ [REDACTED] divestment, Petitioner is subject to a divestment penalty of three months and four days. A divestment penalty period is determined by dividing the total uncompensated value of the divested assets by the average monthly private long-term care cost in Michigan for the client's baseline date. BEM 405 at 13. This provides the number of full months for the penalty period. *Id.* The remaining fraction is multiplied by 30 to determine the number of days for the remaining partial month. *Id.* The total uncompensated value of Petitioner's divested assets is \$ [REDACTED] Petitioner's baseline date is the date she was admitted to long-term care, which was August 10, 2021. In 2021, the average monthly private long-term care cost in Michigan was \$9,560.00 per month.

Id. at 14. Based on the \$[REDACTED] divestment and the long-term care cost of \$9,560.00 per month, Petitioner's divestment penalty is three months and four days.

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 properly determined that Petitioner was subject to a divestment penalty, but the Department did not properly determine the divestment amount or penalty period.

IT IS ORDERED that the Department's decision is **AFFIRMED IN PART and REVERSED IN PART**. The Department's decision that Petitioner is subject to a divestment penalty is affirmed, but the Department's divestment amount and penalty are reversed. The Department must revise the divestment penalty to three months and four days consistent with this decision. The Department must begin to implement this order within 10 days of the mailing date of this hearing decision.



JEFFREY KEMM
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. 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, **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.

Via Electronic Mail:

Respondent

MONROE COUNTY DHHS
903 S TELEGRAPH RD STE A
MONROE, MI 48161

**MDHHS-MONROE-
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MOAHR

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Petitioner

[REDACTED]
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