



Date Mailed: May 14, 2025

Docket No.: 25-009680

Case No.: [REDACTED]

Petitioner: [REDACTED]

[REDACTED], MI [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 April 14, 2025. Petitioner did not appear for the hearing. Petitioner was represented by attorney Kevin Gilhool. The Department of Health and Human Services (Department) was represented by Assistant Attorney General (AAG) Scott Rothermel, who called Assistance Payments Worker Kimberly Snow as a witness.

ISSUE

Did the Department properly impose a Medical Assistance (MA) divestment penalty from April 1, 2025, through August 16, 2025?

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 or around [REDACTED] 2024, Petitioner entered Long-Term Care (LTC).
2. On or around [REDACTED] 2024, a Long-Term Care (LTC) Application for Health Care Coverage Patient of Nursing Facility (DHS-4574) (Application) was submitted to the Department on Petitioner's behalf.

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3. Petitioner disclosed a transfer of assets for less than fair market value. The value of the divested resources was reported to be \$51,330.50, which included a cash transfer of \$48,919.50 and a vehicle transfer with a value of \$2,411.
 4. There was no evidence presented that at the time the Application was submitted, Petitioner was an active recipient of MA, LTC benefits or a waiver recipient.
 5. On December 27, 2024, the Department sent Petitioner a Health Care Coverage Determination Notice notifying Petitioner that for the month of November 2024, he was approved for MA coverage with a patient pay amount (PPA) of \$2,904, and from December 1, 2024, ongoing, Petitioner was approved for MA coverage with a PPA of \$1,047.
 - a. The December 27, 2024, Health Care Coverage Determination Notice did not identify any divestment penalty period.
 6. On or around February 26, 2025, Petitioner's attorney requested a hearing disputing the Department's actions, specifically, the failure to properly process the application and failure to apply a divestment penalty period.
 7. On or around February 27, 2025, the Department sent Petitioner a Health Care Coverage Determination Notice (Notice), advising that his application has been processed and approved with a divestment. The Notice advised that Medicaid will not pay for LTC or Home and Community based Waiver services from April 1, 2025, through August 16, 2025, because of a transfer of assets for less than fair market value.
 8. The Department acknowledged that due to Department error, an incorrect divestment penalty period was applied to Petitioner's MA case.
 9. The parties agreed that the correct divestment penalty period should be November 1, 2024, through March 23, 2025.

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.

Divestment is a type of transfer of a resource and not an amount of resources transferred. Resource means all the client's assets and income. Transferring a resource means giving up all or partial ownership in the resource. Divestment results in a penalty period, not MA program ineligibility. BEM 405 (January 2023), pp. 1-2; BEM 400 (July 2023). 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 divestment is a transfer of a resource by a client 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. BEM 405, p. 1. Department policy provides that a penalty period starts on the client's baseline date, which is the first date that the client is eligible for MA, would otherwise be receiving institutional level care (LTC), and is not already part of the penalty period. BEM 405, pp. 6, 14-15.

In this case, Petitioner does not dispute that a divestment occurred or that the duration of the divestment penalty period was properly calculated, in light of the reported \$51,330.50 value of the divested resources and the \$10,871 average monthly private LTC costs in Michigan applicable to Petitioner's undisputed [REDACTED] 2024, baseline date. BEM 400, pp. 12-15. There was further no dispute by the parties that if Petitioner's application had been processed correctly, the penalty period should have started on November 1, 2024, and ended on March 23, 2025. The Department conceded that agency error at the time of the initial eligibility determination resulted in the imposition of an incorrect divestment penalty period of April 1, 2025, through August 16, 2025, as reflected in the February 26, 2025, Health Care Coverage Determination Notice. Because Petitioner was in LTC at the time of the application and there was no dispute that he met all other eligibility requirements of MA, the parties agreed that the correct divestment penalty period should be November 1, 2024, through March 23, 2025.

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 did not act in accordance with Department policy when it imposed a divestment penalty period to Petitioner's MA case from April 1, 2025, through August 16, 2025.

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. Correct the divestment penalty period for Petitioner's MA case and apply it from November 1, 2024, to March 23, 2025;
2. Supplement Petitioner and/or his provider for any eligible missed MA LTC benefits; and
3. Notify Petitioner and his attorney in writing of its decision.



ZAINAB A BAYDOUN
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:

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