



Date Mailed: July 24, 2025

Docket No.: 25-011513

Case No.: [REDACTED]

Petitioner: [REDACTED] [REDACTED]

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Date Mailed: July 24, 2025  
Docket No.: 25-011513  
Case No.: [REDACTED]  
Petitioner: [REDACTED]

### AMENDED HEARING DECISION

**The hearing decision that was mailed on July 1, 2025, is hereby amended. The conclusions of law section contained an erroneous calculation of the divestment penalty period because it calculated the divestment penalty period based on a 2024 baseline date when it should have been calculated based on a 2025 baseline date. Accordingly, both the conclusions of law section and the decision and order section are amended to correct this error. The effect is that the divestment penalty period is changed from five months and 27 days to five months and 13 days. All changes to the original decision are shown in this hearing decision in bold print.**

On March 14, 2025, Petitioner [REDACTED] requested a hearing to dispute a Medicaid determination. As a result, a hearing was scheduled to be held on June 3, 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 on June 3, 2025. Attorney Edward Newmyer appeared with Petitioner. [REDACTED] and [REDACTED] appeared as Petitioner's witnesses. Assistant Attorney General Heather Sneden appeared for Respondent Michigan Department of Health and Human Services (Department). Assistance Payments Worker Derek Benson and Family Independence Manager Jennifer Wheeler appeared as Respondent's witnesses. The hearing began as scheduled on June 3, 2025, but it could not be completed within the amount of time scheduled for the hearing. As a result, the hearing was continued to be completed on June 24, 2025.

The parties appeared for the scheduled hearing on June 24, 2025. Attorney Edward Newmyer appeared with Petitioner. [REDACTED] and [REDACTED] appeared as Petitioner's witnesses. Assistant Attorney General Heather Sneden appeared for Respondent. Assistance Payments Worker Derek Benson and Family Independence Manager Jennifer Wheeler appeared as Respondent's witnesses.

Both parties provided sworn testimony, and 14 exhibits were admitted into evidence. The following exhibits were admitted into evidence:

- Exhibit A      Respondent's 200-page hearing packet
- Exhibit 1      Email thread
- Exhibit 2      Email thread

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Exhibit 3	Caregiver agreement
Exhibit 4	Documentation for payments made to [REDACTED] [REDACTED]
Exhibit 5	Norton Shores Police Department report
Exhibit 6	[REDACTED] [REDACTED] affidavit and [REDACTED] [REDACTED] affidavit
Exhibit 7	Lease agreement
Exhibit 8	Eviction documents
Exhibit 9	[REDACTED] [REDACTED] affidavit
Exhibit 10	Order denying rehearing or reconsideration
Exhibit 11	Consent Divorce Judgment
Exhibit 12	Attorney letter in response to verification request
Exhibit 13	Personal care record

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### 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:

1. Petitioner suffers from multiple sclerosis.
2. In December 2021, [REDACTED] assessed Petitioner for services, and [REDACTED] determined that Petitioner was totally dependent on others.
3. From December 2021 through February 2022, [REDACTED] provided care for Petitioner.
4. Petitioner's spouse passed away on January [REDACTED] 2022.
5. Petitioner's son, [REDACTED] [REDACTED] moved from Florida to Michigan after Petitioner's spouse passed away. [REDACTED] [REDACTED] moved to Michigan to help provide care for Petitioner.
6. Petitioner consulted an attorney for Medicaid planning, and the attorney advised Petitioner that she had assets she needed to spend down to qualify for Medicaid. Petitioner planned to spend down her assets by paying for her personal care and paying for home improvements.
7. On January [REDACTED] 2022, Petitioner entered into written caregiver agreements with [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED] was Petitioner's daughter-in-law at the time.

8. [REDACTED] all provided personal care services for Petitioner.

9. Petitioner did not obtain a written recommendation signed by her physician stating that personal care services were necessary to prevent her transfer to a residential care or nursing facility.

10. Petitioner made the following payments for her personal care:

- a. On February [REDACTED] 2022, Petitioner paid [REDACTED] \$ [REDACTED]
- b. On March [REDACTED] 2022, Petitioner paid [REDACTED] \$ [REDACTED]
- c. On March [REDACTED] 2022, Petitioner paid [REDACTED] \$ [REDACTED]
- d. On June [REDACTED] 2022, Petitioner paid [REDACTED] \$ [REDACTED]

11. Petitioner entered into agreements with [REDACTED] for various services. Petitioner's son, [REDACTED] owned [REDACTED].

12. Petitioner made the following payments to [REDACTED]:

- a. On March [REDACTED] 2022, Petitioner paid \$ [REDACTED] The payment was for 2021 snow removal.
- b. On March [REDACTED] 2022, Petitioner paid \$ [REDACTED] The payment was for 2022 law care.
- c. On March [REDACTED] 2022, Petitioner paid \$ [REDACTED] The payment was for clearing trash from Petitioner's home at [REDACTED].
- d. On March [REDACTED] 2022, Petitioner paid \$ [REDACTED] The check stated that it was for "topsoil / sod."
- e. On March [REDACTED] 2022, Petitioner paid \$ [REDACTED] The check stated that it was for "2022 lawn care."

13. [REDACTED] did not create invoices for the services that Petitioner paid [REDACTED] for until after Petitioner made her payments to [REDACTED]

14. On March [REDACTED] 2022, [REDACTED] wrote two checks from Petitioner to [REDACTED] without Petitioner's permission. One check was for \$ [REDACTED] for truck storage, and the other check was for \$ [REDACTED] for landscaping. After police started investigating the payments, [REDACTED] returned the money to Petitioner.

15. On October [REDACTED] 2022, Petitioner paid [REDACTED] \$ [REDACTED] The check stated that it was for "lbr floor / meds / grocery."

16. On November [REDACTED] 2022, Petitioner paid [REDACTED] \$ [REDACTED] for labor for himself and others from July 2022 through October 2022.

17. On January [REDACTED] 2023, Petitioner applied for Medicaid.

18. On February [REDACTED] 2023, Petitioner sold her home at [REDACTED] in an arm's-length transaction for \$ [REDACTED] Petitioner received net proceeds of \$ [REDACTED] from the sale.

19. On February [REDACTED] 2023, Petitioner entered into an agreement with [REDACTED] and [REDACTED] to purchase a 14% share of their home at [REDACTED] in Grand Haven, Michigan, for \$ [REDACTED]

20. On February [REDACTED] 2023, the Department denied Petitioner's January [REDACTED] 2023, application for Medicaid because Petitioner did not provide verifications as instructed.

21. [REDACTED] filed a complaint for divorce from [REDACTED] Petitioner joined the proceeding as a party due to her interest in the home at [REDACTED] in Grand Haven, Michigan. As part of the divorce proceedings, the Ottawa County Circuit Court authorized the sale of the home at [REDACTED] in Grand Haven, Michigan.

22. On January [REDACTED] 2024, Petitioner applied for Medicaid again.

23. The Department approved Petitioner for Medicaid with an \$ [REDACTED] monthly deductible.

24. On July [REDACTED] 2024, [REDACTED], [REDACTED] and Petitioner sold the home at [REDACTED] in Grand Haven, Michigan, in an arm's-length transaction for \$ [REDACTED] They received net proceeds of \$ [REDACTED] from the sale.

25. In 2024, the state equalized value (SEV) of the home at [REDACTED] in Grand Haven, Michigan, was \$ [REDACTED]

26. On September [REDACTED] 2024, the Ottawa County Circuit Court issued a consent divorce judgment in [REDACTED] divorce case with [REDACTED]. The consent divorce judgment ordered how the net proceeds of \$ [REDACTED] should be disbursed. The consent divorce judgment ordered that Petitioner should receive \$ [REDACTED] [REDACTED] should receive \$ [REDACTED] and [REDACTED] should receive \$ [REDACTED]

27. On November [REDACTED] 2024, the Department reviewed Petitioner's case and determined that Petitioner was subject to a divestment penalty of \$ [REDACTED] for \$ [REDACTED] paid to [REDACTED], \$ [REDACTED] paid for personal care, and \$ [REDACTED] paid to [REDACTED] for other services. Additionally, the Department determined that Petitioner may be subject to an additional divestment penalty of

\$ [REDACTED] because the home at [REDACTED] in Grand Haven, Michigan, was sold for less than twice the SEV. The Department requested that Petitioner provide proof that the home was sold for fair market value.

28. Petitioner requested that the Department waive her divestment penalty due to undue hardship.
29. On January [REDACTED] 2025, the Department denied Petitioner's request to waive her divestment penalty due to undue hardship.
30. On February [REDACTED] 2025, the Department reviewed Petitioner's case because it received notice that Petitioner was going to be enrolled in PACE. The Department determined that Petitioner did not provide proof that the home at 1 [REDACTED] [REDACTED] in Grand Haven, Michigan, was sold for fair market value, so the Department assessed an additional divestment penalty of \$ [REDACTED]. The Department determined that Petitioner was subject to a total divestment penalty of \$ [REDACTED].
31. On February [REDACTED] 2025, the Department mailed a health care coverage determination notice to Petitioner to notify her that she was subject to a divestment penalty of \$ [REDACTED].
32. On March [REDACTED] 2025, Petitioner enrolled to receive PACE services.
33. On March [REDACTED] 2025, Petitioner requested that the Department waive her divestment penalty due to undue hardship.
34. On March [REDACTED] 2025, the Department denied Petitioner's request to waive her divestment penalty due to undue hardship.
35. On March [REDACTED] 2025, Petitioner requested a hearing to dispute the divestment penalty.
36. The Department reviewed Petitioner's case and determined that it could only support \$ [REDACTED] of the \$ [REDACTED] divestment penalty. The Department asserted that Petitioner is subject to a divestment penalty of \$ [REDACTED] as a result of the following divestments:
  - a. \$ [REDACTED] paid to [REDACTED];
  - b. \$ [REDACTED] paid to [REDACTED] for personal care;
  - c. \$ [REDACTED] paid to [REDACTED] for labor and expenses; and
  - d. \$ [REDACTED] for the sale of the home at [REDACTED] in Grand Haven, Michigan, for less than fair market value.

## 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 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.

In this case, Petitioner is disputing the Department's decision to impose a divestment penalty on Petitioner. The Department imposed a divestment penalty on Petitioner for four different types of transfers. The Department imposed a divestment penalty for \$ [REDACTED] paid to [REDACTED], the Department imposed a divestment penalty for \$ [REDACTED] paid for personal care, the Department imposed a divestment penalty for \$ [REDACTED] paid to [REDACTED] for labor and other expenses, and the Department imposed a divestment penalty for the sale of a home for less than fair market value.

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 (February 1, 2025), 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, and home health. *Id.*

## PAYMENTS MADE TO LANDSCAPE SUPPLY

Petitioner made five payments to [REDACTED] over the course of eight days in March 2022. [REDACTED] was Petitioner's son's landscaping business. The five payments that Petitioner made to [REDACTED] totaled \$ [REDACTED]. The Department determined that the payments were a divestment because they were transfers for less than fair market value. Based on the evidence presented, the Department properly determined that the payments were a divestment.

[REDACTED] did not perform the services that Petitioner paid for. Petitioner made multiple payments to her son's landscaping business over the course of eight days, and Petitioner's son's landscaping business did not create invoices for the payments until after Petitioner made the payments. These facts establish that the payments were not

made for landscaping services as purported, and Petitioner did not present sufficient evidence to establish otherwise. Petitioner paid [REDACTED] \$[REDACTED] for services that [REDACTED] did not perform, and Petitioner did not pursue [REDACTED] to attempt to get her money back. Accordingly, Petitioner transferred \$[REDACTED] for less than fair market value.

Transfers that are made for another purpose are transfers that are not a divestment. BEM 405 at 12. This includes transfers that were made exclusively for a purpose other than to qualify or remain eligible for Medicaid. *Id.* Thus, a transfer for less than fair market value is not a divestment if it was made exclusively for a purpose other than to qualify or remain eligible for Medicaid. However, the Department must assume that transfers for less than fair market value were made for Medicaid eligibility purposes until the client provides convincing evidence to establish that she had no reason to believe that she might need LTC, PACE, or MiChoice waiver services. *Id.* In this case, the payments that Petitioner made to [REDACTED] must be considered a divestment because Petitioner made the payments as part of her plan to qualify for Medicaid, and Petitioner had reason to believe that she might need LTC, PACE, or MiChoice waiver services.

#### PAYMENTS MADE FOR PERSONAL CARE

Petitioner paid [REDACTED] a total of \$[REDACTED] for personal care services. Petitioner entered into caregiver agreements with [REDACTED] before they provided services for Petitioner. However, the personal care services were not recommended by Petitioner's physician as necessary to prevent her transfer to a residential care or nursing facility in a written and signed recommendation. The Department determined that the payments that Petitioner made pursuant to her caregiver agreements were a divestment because they were transfers for less than fair market value. Based on the evidence presented, the Department properly determined that the payments were a divestment.

Personal care and home care contracts/agreements shall be considered a transfer for less than fair market value unless the agreement meets the following: (1) the services must be performed after a written legal contract/agreement has been executed between the client and the provider. The contract/agreement must be dated, and the signatures must be notarized. The services are not paid for until the services have been provided (prospective payments prohibited). (2) The client cannot be residing in a nursing facility, adult foster care home institution for mental diseases, inpatient hospital, intermediate care facility for individuals with intellectual disabilities or be eligible for home and community-based waiver, home health, or home help. (3) The services must have been recommended at the time the services were provided in writing and signed by the client's physician as necessary to prevent the transfer of the client to a residential care or nursing facility. (4) The contract/agreement must be signed by the client or the

client's legally authorized representative, but the legally authorized representative cannot be the client's provider. BEM 405 at 8-9.

The personal care contract/agreement rule creates a rebuttable presumption that payments made pursuant to personal care contracts/agreements are transfers for less than fair market value. When a transfer involves a personal care contract/agreement, the Department must first determine whether the client's personal care contract/agreement meets the requirements set forth in BEM 405 to rebut the presumption that the personal care contract/agreement is a transfer for less than fair market value. If the client's personal care contract/agreement meets the requirements set forth in BEM 405 to rebut the presumption that the personal care contract/agreement is a transfer for less than fair market value, then the transfer is not a divestment because it is not a transfer of a resource for less than fair market value. If the client's personal care contract/agreement does not meet the requirements set forth in BEM 405 to rebut the presumption that the personal care contract/agreement is a transfer for less than fair market value, then the transfer is a transfer of a resource for less than fair market value, and the Department should determine whether the transfer is a divestment.

In this case, Petitioner's caregiver agreements did not meet the requirements of BEM 405 because the personal care services were not recommended at the time the services were provided in writing and signed by Petitioner's physician as necessary to prevent her transfer to a residential care or nursing facility. Thus, the payments that Petitioner made pursuant to her caregiver agreements were a transfer of a resource for less than fair market value.

Transfers that are made for another purpose are transfers that are not a divestment. *Id.* at 12. This includes transfers that were made exclusively for a purpose other than to qualify or remain eligible for Medicaid. *Id.* Thus, a transfer for less than fair market value is not a divestment if it was made exclusively for a purpose other than to qualify or remain eligible for Medicaid. However, the Department must assume that transfers for less than fair market value were made for Medicaid eligibility purposes until the client provides convincing evidence to establish that she had no reason to believe that she might need LTC, PACE, or MiChoice waiver services. *Id.* In this case, the payments that Petitioner made pursuant to her caregiver agreements must be considered a divestment because Petitioner made the payments as part of her plan to qualify for Medicaid, and Petitioner had reason to believe that she might need LTC, PACE, or MiChoice waiver services.

#### PAYMENTS MADE TO JASON DANIELS

Petitioner made two payments to [REDACTED] totaling \$[REDACTED]. Petitioner made these payments to [REDACTED] for labor, medications, and groceries. The Department determined that the payments were a divestment because they were

transfers for less than fair market value. Based on the evidence presented, the Department properly determined that the payments were a divestment.

[REDACTED] is one of Petitioner's sons. The relevant policy states that "relatives can be paid for providing services; however, assume services were provided for free when no payment was made at the time services were provided. A client can rebut this presumption by providing tangible evidence that a payment obligation existed at the time the services was provided (for example a written agreement signed at the time services were first provided.)" BEM 405 at 7. Since Petitioner made the payments to her son, Petitioner made the payments to a relative. Petitioner did not present any evidence to establish that Petitioner paid [REDACTED] at the time services were provided. The only documentation that Petitioner provided was copies of cancelled checks. The cancelled checks showed that [REDACTED] started providing the services in July 2022, and Petitioner did not make her first payment to him until October 2022. Thus, Petitioner paid a relative, and no payment was made at the time services were provided. Under these circumstances, the Department was required to presume that [REDACTED] provided the services for free. Petitioner did not present any tangible evidence to rebut this presumption, so the Department properly determined that the payments were a transfer of a resource for less than fair market value.

Transfers that are made for another purpose are transfers that are not a divestment. *Id.* at 12. This includes transfers that were made exclusively for a purpose other than to qualify or remain eligible for Medicaid. *Id.* Thus, a transfer for less than fair market value is not a divestment if it was made exclusively for a purpose other than to qualify or remain eligible for Medicaid. However, the Department must assume that transfers for less than fair market value were made for Medicaid eligibility purposes until the client provides convincing evidence to establish that she had no reason to believe that she might need LTC, PACE, or MiChoice waiver services. *Id.* In this case, the payments that Petitioner made to Jason Daniels must be considered a divestment because Petitioner made the payments as part of her plan to qualify for Medicaid, and Petitioner had reason to believe that she might need LTC, PACE, or MiChoice waiver services.

#### SALE OF HOME FOR LESS THAN FAIR MARKET VALUE

Petitioner owned a share of a home jointly with [REDACTED] and [REDACTED]. When [REDACTED] got divorced, the court authorized the sale of the home that Petitioner owned a share of, and the home was sold in an arm's-length transaction. Although the home was sold for less than twice the SEV, it was still sold for fair market value because it was sold in an arm's-length transaction. Since the home was sold was fair market value, it was not a divestment.

#### SUMMARY

In summary, the Department properly determined that Petitioner was subject to a divestment penalty. However, the Department did not properly determine the

divestment amount and the length of the divestment penalty. Based on the evidence presented, Petitioner divested resources totaling \$ [REDACTED]

**Based on the \$ [REDACTED] divestment, Petitioner is subject to a divestment penalty of five months and 13 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 2025 because that is the year that Petitioner was approved for Medicaid and began receiving institutional level care. In 2025, the average monthly private long-term care cost in Michigan was \$11,842.00 per month. *Id.* at 15. Based on the \$ [REDACTED] divestment and the long-term care cost of \$11,842.00 per month, Petitioner's divestment penalty is five months and 13 days.**

Petitioner asserted that she should not be subject to a divestment penalty because she made other transfers that offset her divestment. A divestment penalty can only be cancelled when the transferred resources are returned or fair market value is paid for the resources. *Id.* at 16-17. In this case, Petitioner did not establish that the transferred resources have returned to Petitioner, and Petitioner did not establish that she has received fair market value for her transfers. Thus, Petitioner's divestment penalty cannot be cancelled.

Petitioner also asserted that she is entitled to an undue hardship waiver, and the Department improperly denied her requests for an undue hardship waiver. An undue hardship waiver is a policy exception, and a client is not entitled a hearing on a policy exception denial. BEM 100 (April 1, 2023), pp. 10-12). Thus, Petitioner does not have a right to a hearing on the Department's decision to deny her undue hardship waiver. Therefore, I will not address the Department's decision to deny her undue hardship waiver.

**For these reasons, Petitioner divested resources totaling \$ [REDACTED] so Petitioner is subject to a divestment penalty of five months and 13 days.** Thus, the Department properly determined that Petitioner was subject to a divestment penalty, but the Department did not properly determine the length of the divestment penalty. Accordingly, the Department's decision is affirmed in part and reversed in part.

## **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 the length of the divestment penalty.

**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 the length of the divestment penalty are reversed. **The Department must revise the divestment penalty to five months and 13 days consistent with this decision.** The Department must begin to implement this order within 10 days of the mailing date of this hearing decision.



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**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](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

25-011513

P.O. Box 30639  
Lansing Michigan 48909-8139

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**Via Electronic Mail:**

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