



**Date Mailed:** November 26, 2025  
**Docket No.:** 25-016159  
**Case No.:** [REDACTED]  
**Petitioner:** [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

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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.

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**Docket No.:** 25-016159

**Case No.:** [REDACTED]

**Petitioner:** [REDACTED] [REDACTED]

### **HEARING DECISION**

On April 22, 2025, Petitioner [REDACTED] [REDACTED] requested a hearing to dispute a Medicaid determination. The Michigan Department of Health and Human Services forwarded Petitioner's hearing request to the Michigan Office of Administrative Hearings and Rules (MOAHR) to schedule a hearing, and MOAHR scheduled a hearing to be held on June 26, 2025. MOAHR initially dismissed Petitioner's hearing request after Petitioner failed to appear for the hearing on June 26, 2025. However, MOAHR then discovered that it did not properly notify Petitioner of the June 26, 2025, hearing, so MOAHR vacated the dismissal and scheduled a hearing to be held on November 25, 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 November 25, 2025. Petitioner's authorized hearing representative, [REDACTED] [REDACTED] appeared for Petitioner. Petitioner had one witness, [REDACTED] [REDACTED]. Respondent Michigan Department of Health and Human Services (Department) had Eligibility Specialist Nicholas Hebert appear as its representative. There were no other participants.

Both parties provided sworn testimony, and one exhibit was admitted into evidence. An 82-page packet of documents provided by the Department was admitted into evidence 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:

1. Petitioner moved in with her niece, [REDACTED] [REDACTED] when Petitioner's needs became too much for Petitioner's sister to take care of.
2. On May [REDACTED] 2023, Petitioner and Ms. [REDACTED] entered into a written agreement. Pursuant to the agreement, Petitioner agreed to pay Ms. [REDACTED] \$[REDACTED] per month for living expenses and \$[REDACTED] per month for Ms. [REDACTED] lost wages.

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3. Petitioner did not obtain a written statement from a medical professional that services were necessary to prevent her transfer to a residential care or a nursing facility.
  4. Ms. Tiede provided care for Petitioner while Petitioner was living with Ms. [REDACTED]
  5. From June 2023 through March 2025, Petitioner transferred a total of \$ [REDACTED] to Ms. [REDACTED] pursuant to their agreement.
  6. On March [REDACTED] 2025, Petitioner applied for long-term-care Medicaid.
  7. On March [REDACTED] 2025, Petitioner was admitted to a long-term-care facility.
  8. On March [REDACTED] 2025, Dr. [REDACTED] [REDACTED] wrote a letter that stated in part, “[Petitioner] was enrolled in hospice care beginning on August [REDACTED] of 2024, requiring the need for a dedicated caregiver to assist with her medical and personal care. The presence of a caregiver has been vital in assisting her with daily activities, as well managing, the symptoms of her medical diagnosis. 24/7 care is essential for her well-being, safety, and comfort. Recently, [Petitioner] transferred to a skilled nursing facility to provided her with a higher level of care on March 4, 2025. . . .”
  9. The Department reviewed Petitioner’s case and determined that the \$ [REDACTED] that Petitioner transferred to Ms. [REDACTED] was a divestment.
  10. On April [REDACTED] 2025, the Department issued a health care coverage determination notice. The notice stated that Petitioner was eligible for Medicaid, effective March 1, 2025. The notice stated that Petitioner’s baseline date was March 4, 2025. The notice stated that the payments that Petitioner made to her niece were a divestment, and Petitioner was subject to a divestment from March 4, 2025, through August 18, 2025.
  11. 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 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

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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 her. The Department imposed a divestment penalty on Petitioner because the Department determined that the \$ [REDACTED] that Petitioner transferred to her niece was a transfer 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.*

Petitioner entered into a written agreement with her niece on May [REDACTED] 2023. Pursuant to the agreement, Petitioner agreed to pay her niece \$ [REDACTED] per month for living expenses and \$ [REDACTED] per month for her niece's lost wages. At the time that Petitioner was receiving services from her niece, Petitioner did not have a written statement from a medical professional that services were necessary to prevent her transfer to a residential care or a nursing facility. Petitioner paid her niece a total of \$ [REDACTED] pursuant to their agreement.

The Department determined that the payments that Petitioner made to her niece were a divestment. The Department determined that the payments were a divestment because, at the time that Petitioner was receiving services from her niece, Petitioner did not have a written statement from a medical professional that services were necessary to prevent her transfer to a residential care or a nursing facility.

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 signed by the client or the client's legally authorized representative (which cannot be the provider or beneficiary of the contract/agreement). The contract/agreement must describe the type, frequency, and duration of services provided. The contract/agreement must state the amount to be paid for the services.

(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.

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(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 written agreement with her niece did not meet the requirements of BEM 405. First, the agreement did not describe the type, frequency, and duration of services provided. Second, at the time Petitioner was receiving services from her niece, the services were not recommended in writing by a medical professional as necessary to prevent her transfer to a residential care or a nursing facility. Since Petitioner's written agreement with her niece did not meet the requirements of BEM 405, the payments that Petitioner made to her niece pursuant to the agreement 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 her niece pursuant to the agreement must be considered a

divestment because Petitioner and her niece had reason to believe that Petitioner might need LTC, PACE, or MIChoice wavier services.

In summary, the Department properly determined that Petitioner divested resources totaling \$ [REDACTED]. 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.* In this case, the average monthly private long-term-care cost in Michigan as of Petitioner's baseline date was \$ [REDACTED]. *Id.* at 15. Thus, Petitioner's divestment penalty period was 5 months and 15 days. Therefore, the Department properly determined Petitioner's divestment penalty period. Accordingly, the Department's decision is affirmed.

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## DECISION AND ORDER

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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 Petitioner's divestment penalty.

**IT IS ORDERED** that the Department's decision is **AFFIRMED**.



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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](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://rs.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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**Via Electronic Mail:**

**Respondent**  
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STE 3013  
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**Via First Class Mail:**

**Petitioner**

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**Authorized Hearing Rep**

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**Authorized Hearing Rep**

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