



Date Mailed: September 30, 2025
Docket No.: 25-028220
Case No.: [REDACTED]
Petitioner: [REDACTED]

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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.

这是一份重要的法律文件。请让别人翻译文件。

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

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Docket No.: 25-028220

Case No.: [REDACTED]

Petitioner: [REDACTED]

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 September 25, 2025. Petitioner was represented by her attorney Robert Manor. The Michigan Department of Health and Human Services (MDHHS or Department) was not present.

ISSUE

Did the Department fail to properly impose a Medical Assistance (MA) divestment penalty from April 1, 2025, through November 30, 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] 2025, Petitioner entered a Long-Term Care (LTC) facility.
2. A Long-Term Care (LTC) Application for Health Care Coverage Patient of Nursing Facility (DHS-4574) was submitted to the Department on Petitioner's behalf requesting MA benefits effective April 1, 2025.
 - a. At the time of the application, Petitioner disclosed a transfer of assets for less than fair market value. The value of the divested resources was reported to be \$94,736.
3. 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.
4. On July 14, 2025, the Department issued a Health Care Coverage Determination Notice approving Petitioner for MA benefits effective April 1, 2025, ongoing (Exhibit A, pp. 12-15). The Department failed to process the divestment penalty.
5. The Department was unable to retroactively apply the divestment penalty period to April 1, 2025, due to timely notice policies and could not complete a policy override.

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6. On July 29, 2025, Petitioner’s attorney submitted a request for hearing disputing the Department’s actions, specifically, the incorrect start date of the divestment penalty period.
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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.

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 \$94,736 value of the divested resources and the \$11,842 average monthly private LTC costs in Michigan applicable to Petitioner’s undisputed April 1, 2025 baseline date. BEM 405, pp. 12-15.

At issue is the start date of the divestment penalty period. Petitioner asserts that the correct penalty period should be April 1, 2025, and lasting through November 30, 2025, as that is the date in which Petitioner was in LTC and met the eligibility requirements of MA. The Department presented evidence that, due to agency error, the divestment penalty was processed late, and the penalty period could not be applied retroactively.

After processing an application and upon certification of eligibility results, Bridges automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. BAM 220 (November 2023), p. 2.

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An adequate notice is a written notice sent to the client at the same time an action takes effect (not pended). For MA cases, adequate notice is given at case opening with a deductible or patient pay amount, or at case opening with a divestment penalty. BAM 220, pp. 3-4. A timely notice is given for negative case actions and is mailed 11 days before the intended negative action takes effect. The action is pended to provide the client a chance to react to the proposed action. BAM 220, pp. 4-5. Examples of negative actions are outlined in BAM 220, none of which include changing the start date of a divestment penalty. BAM 220, p. 11.

At the hearing, the Department was not present to identify which negative action it asserted occurred in this case, as applying a new divestment penalty to a newly processed application or changing the start date of a divestment penalty are not reflected in the negative actions outlined in BAM 220 that would require timely notice. Additionally, the Department did not present any evidence that correcting the start date of a divestment penalty would be a change of the PET code to a divestment penalty code, that would require timely notice. BAM 220, p.11.

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. There was no dispute that Petitioner's baseline date was April 1, 2025, or that, if processed correctly and timely, the penalty period should have started on April 1, 2025, and ended on November 30, 2025. The Department indicated in its Hearing Summary that an agency error at the time of the initial eligibility determination resulted in the failure to impose a divestment penalty period.

Although not specifically referenced by the Department during the hearing, Department policy at BEM 405 states the following with respect to agency error and recipient exceptions:

Note: If a past unreported divestment is discovered or an agency error is made which should result in a penalty, a penalty must be determined under the policy in place at the time of discovery. If a penalty is determined for a transfer in the past, apply the penalty from the first day after timely notice is given; see Recipient Exception in this item.

Recipient Exception

Timely notice must be given to LTC recipients and (BEM 106) waiver recipients before actually applying the penalty. Adequate notice must be given to new applicants.

BEM 405, pp. 14-15. There was no evidence that prior to the application, Petitioner was a recipient of LTC benefits, and thus, she is considered a new applicant, as she was not

a current beneficiary of LTC MA at the time the application was processed or at the time the application and MA eligibility were incorrectly certified. Additionally, the divestment in this case was not unreported and was not discovered or determined for a transfer in the past, as the Department was aware of it at the time it processed the application. Therefore, based on the evidence presented, and because the Department is not imposing a penalty to an ongoing case, but rather correcting its admitted agency error in the start date of a penalty at the time of application processing, adequate notice to Petitioner is sufficient.

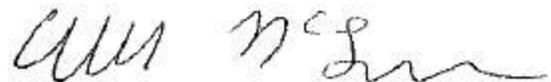
DECISION AND ORDER

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 failed to impose a divestment penalty period to Petitioner's MA case from April 1, 2025, through November 30, 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 April 1, 2025, through November 30, 2025;
2. Supplement Petitioner and/or her provider for any eligible missed MA LTC benefits; and
3. Notify Petitioner and her attorney in writing of its decision.



**ELLEN MCLEMORE
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://irs.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

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Via Electronic Mail:

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Petitioner
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