

## ISSUE

Did the Department properly determine Petitioners' eligibility for Medical Assistance (MA) for the September 10, 2025 and October 7, 2025 determinations?

## 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 **REDACTED**, 2025 applications for long term care (LTC) MA were filed for spouses JY and PY. It was reported that Petitioners were admitted into a LTC facility on January 31, 2025. It was reported that assets had been sold, given away, or transferred ownership within the last 5 years. Petitioners anticipated a divestment penalty of 16 months and 18 days, split between both spouses, giving each a penalty period of 8 months and 9 days starting February 1, 2025. (Exhibit A, pp. 7 and 26-55)
2. On April 29, 2025, a Health Care Coverage Determination Notice was issued showing a divestment penalty period of February 1, 2025 through May 4, 2025 for JY. (Exhibit A, pp. 180-184)
3. On May 2, 2025, Petitioners notified the Department that the divestment penalty period was not split between JY and PY. (Exhibit A, p. 9)
4. On May 5, 2025, the APW notified Petitioners that she was reaching out to the help desk to see if they could get the divestment penalty period split correctly. (Exhibit A, p. 9)
5. On May 14, 2025, a Health Care Coverage Determination Notice was issued showing a divestment penalty period for JY of February 1, 2025 through November 17, 2025 and a divestment penalty period for PY of June 1, 2025 through November 17, 2025. (Exhibit A, pp. 197-199)
6. On May 21, 2025, Petitioners notified the Department that the divestment penalty period was still not split correctly. (Exhibit A, pp. 11-12)
7. On May 21, 2025, the APW responded proving the explanation from the help desk, including that the penalty period for PY could not be started any earlier than June 1, 2025 to allow for timely notice, and therefore, the remaining penalty days were split between the spouses. (Exhibit A, p. 10)
8. The May 21, 2025 email from the APW also noted that even though it was reported that nine properties were gifted, only one property was recorded as transferred. The deed transfers were not completed for the other properties. Therefore, the remaining eight properties were counted as assets. (Exhibit A, p. 10).

9. The sign over dates for seven of the remaining properties was April 14, 2025 and the sign over date for last remaining property was June 9, 2025. (Exhibit A, pp. 130-179)
10. The Department determined an additional divestment penalty based on the transfer of the eight remaining properties, which were initially counted as assets. (Exhibit A, p. 200)
11. On September 10, 2025, a Health Care Coverage Determination Notice was issued showing an additional divestment penalty period for JY of November 18, 2025 through December 3, 2025 and an additional divestment penalty period for PY of November 18, 2025 through December 2, 2025. (Exhibit A, pp. 200-202)
12. On September 26, 2025, Petitioners filed a hearing request contesting the September 10, 2025, Health Care Coverage Determination Notice. (Exhibit A, p. 3)
13. On October 7, 2025, the Department learned that JY passed away on September 25, 2025. (Exhibit B, p. 1)
14. The Department transferred the remaining divestment penalty period from JY to PY. (Exhibit B, p. 1)
15. On October 7, 2025, a Health Care Coverage Determination Notice was issued showing a divestment penalty period for PY of December 3, 2025 through February 10, 2026. (Exhibit B, pp. 5-7)
16. On October 14, 2025, Petitioners filed a hearing request contesting the October 7, 2025, Health Care Coverage Determination Notice. (Exhibit B, pp. 3-4)

### **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 means the transfer of a resource by a client or his spouse that are all the following: within a specified time; a transfer for less than fair market value; and not listed under transfers that are not divestment. BEM 405, July 1, 2025, p. 1.

A person's baseline date is the first date that the client was eligible for Medicaid and one of the following: in LTC; approved for MIChoice waiver; see BEM 106; approved for the PACE program; see BEM 167; eligible for Home Health services; eligible for Home Help services. BEM 405, p. 6.

Transfers that occur on or after a client's baseline date must be considered for divestment. In addition, transfers that occurred within the 60-month look-back period must be considered for divestment. BEM 405, p. 5.

The Department is to compute the penalty period on the total Uncompensated Value of all resources divested. Determine the Uncompensated Value for each resource transferred and combine into a total Uncompensated Value. Divide the total Uncompensated Value by the average monthly private LTC Cost in Michigan for the client's Baseline Date. This gives the number of full months for the penalty period. Multiply the fraction remaining by 30 to determine the number of days for the penalty period in the remaining partial month. Apply the total penalty months and days. Apply a penalty even if the total amount of the penalty is for only a partial month. Apply the penalty to the months (or days) an individual is eligible for Medicaid and actually in LTC, PACE, Home Health, Home Help, the MIChoice Waiver. Do not apply the divestment penalty to a period when the individual is not eligible for Medicaid for any reason (that is the case closes for any reason or is eligible for Medicaid but is not in LTC, Home Help, Home Health, MIChoice Waiver, PACE program). Restart the penalty when the individual is again eligible for Medicaid and in LTC, Home Help, Home Health, the MIChoice Waiver, PACE program. When a medical provider is paid by the individual, or by a third party on behalf of the individual, for medical services received, that month is not a penalty month. Do not count that month as part of the penalty period. This does not include payments made by commercial insurance or Medicare; see Resources Returned in this item. BEM 405, p. 13.

A divestment penalty is imposed on whichever spouse is in a penalty situation. If both spouses are in a penalty situation, the penalty period (or any remaining part) must be divided between them. Example: Mr. and Mrs. Brown divested themselves of assets prior to Mr. Brown entering an LTC facility and applying for Medicaid. Mr. Brown is in LTC and under a divestment penalty for 24 months. When Mrs. Brown enters the facility 6 months later, the remaining 18 months of Mr. Brown's penalty are divided between them, giving Mr. and Mrs. Brown each 9 months of the penalty still to complete. If either Mr. or Mrs. Brown dies before they complete their penalty the remainder of their penalty is transferred to their spouse. BEM 405, p. 15.

As noted above, Petitioners' September 29, 2025 and October 14, 2025 hearing requests were only timely filed to contest the September 10, 2025 and October 7, 2025 Health Care Coverage Determination Notices.

### **September 10, 2025 Determination**

On September 10, 2025, a Health Care Coverage Determination Notice was issued showing an additional divestment penalty period for JY of November 18, 2025 through December 3, 2025 and an additional divestment penalty period for PY of November 18, 2025 through December 2, 2025. (Exhibit A, pp. 200-202). This was not a recalculation of the entire divestment penalty period. Rather, the Department added an additional divestment penalty period based on the completion of the previously reported transfers of eight remaining properties that were initially counted as assets.

Petitioners noted that the transfer of these properties was reported along with the other gifts to their daughter at the time of application. However, the evidence shows that even though it was reported that nine properties were gifted, only one property was recorded as transferred on February 28, 2025. The deed transfers were not completed for the other properties at that time. Therefore, these properties were counted as assets when the initial divestment penalty period determinations were made. (Exhibit A, pp. 10 and 130-179).

The sign over date for seven of the remaining properties was April 14, 2025 and the sign over date for last remaining property was June 9, 2025. It is not clear when the Department received verifications showing that the transfer of these properties was completed. However, it appears that it would have been after July 21, 2025, based on the latest of the dates in the auditor text blocks showing when the recording of these transfers were completed. (Exhibit A, pp. 130-179).

The Department then calculated a divestment penalty for the transfers of these eight properties and split the penalty between JY and PY. The Department determined that the total amount transferred was \$12,310.00. (Exhibit A, p. 200). For a baseline date in 2025, the LTC cost used to calculate the divestment penalty is \$11,842.00. BEM 405, July 1, 2025, p. 14. This resulted in an additional divestment penalty period of one month and one day. It appears that when this was split between JY and PY, the additional day was added to JY because there would be no way to split one day between spouses. Therefore, divestment penalties of 16 days (November 18, 2025 through December 3, 2025) for JY and 15 days (November 18, 2025 through December 2, 2025) for PY were imposed. (Exhibit A, p. 200).

The Department's determination that additional divestment occurred when the transfers of the additional eight properties were completed, and imposition of the additional divestment penalty period split between JY and PY, was in accordance with policy.

### **October 7, 2025 Determination**

On October 7, 2025, a Health Care Coverage Determination Notice was issued showing a divestment penalty period for PY of December 3, 2025 through February 10, 2026. (Exhibit B, pp. 5-7).

Again, this was not a recalculation of the entire divestment penalty period. Rather, once the Department learned that JY had passed away, the Department transferred the remaining penalty period from JY to PY. It was uncontested that JY passed away on September 25, 2025. Accordingly, on October 7, 2025, a Health Care Coverage Determination Notice was issued showing a divestment penalty period for PY of December 3, 2025 through February 10, 2026. (Exhibit B, pp. 5-7). The Department's determination to transfer the remaining divestment penalty period from JY to PY was in accordance with policy.

### **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 acted in accordance with Department policy when it determined Petitioners' eligibility for MA for the September 10, 2025 and October 7, 2025 determinations.

Accordingly, the Department's decisions are **AFFIRMED**.