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## **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. After due notice, a telephone hearing was held on February 24, 2026. Petitioner was represented by his attorney Laurie D. Brewis. REDACTED REDACTED testified on behalf of Petitioner. The Department was represented by Assistant Attorneys General Kelly A. Carter and Andrew B. Bronstein. Kmbali Carey testified on behalf of the Department.

### **ISSUE**

Did the Department of Health and Human Services (Department) properly determine that a divestment penalty should apply against Petitioner's Medical Assistance (MA) Long-Term Care (LTC) benefits?

### **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 May REDACTED, 2025, the Department received Petitioner's application for Health Care Coverage Patient Of Nursing Facility. Exhibit A, p 35.
2. Petitioner reported that on June 7, 2023, she transferred real property located at REDACTED to her son for the sum of \$1.00, which has a fair market value of \$333,000. Exhibit A, pp 41-45.
3. Petitioner's son reported paying for repairs and renovations at the real property located at REDACTED as well as paying for Petitioner's care in assisted living with the total expenditures totaling \$164,752.30, which was paid from a trust where he is the beneficiary. Exhibit A, p 12.
4. On September REDACTED, 2025, the Department notified Petitioner that she was eligible for Medical Assistance (MA) with a \$REDACTED monthly patient pay amount, that she was not eligible for the Medicare Savings Program (MSP), and that a divestment penalty would apply against her Long-Term Care (LTC) benefits from October 1, 2025, through February 3, 2028. Exhibit A, pp 46-47.
5. On November 18, 2025, the Department received Petitioner's request for a hearing protesting the application of a divestment penalty against her Long-Term Care (LTC) benefits. Exhibit A, pp 6-9.

### **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

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Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396 through 42 USC 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 through 42 CFR 420.25. The Department administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.103 through MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

Divestment means a transfer of a resource by a client or his spouse that is within a specified time, for less than fair market value, and not excluded by policy. Divestment results in a penalty period where the client's expenses for long-term care (LTC) services, home and community-based services, home help, and home health are not covered by the client's Medical Assistance (MA) benefits. Department of Human Services Bridges Eligibility Manual (BEM) 405 (January 1, 2026), p 1.

Petitioner transferred real property to her son in exchange for \$1. The hearing record supports a finding that the fair market value of the property was \$333,000. By transferring an available asset for less than fair market value, Petitioner has divested a valuable asset.

Petitioner's attorney argues that the transfer was not divestment because the real property was transferred to a child.

A transfer of an available asset is not divestment when the asset is transferred to a spouse, or a child under certain circumstances, or a sibling. A transfer to a child is not divestment if the child is blind or disabled, under age 21, or over age 21 who lived in the homestead for at least two years immediately before the client's admission to LTC and provided care that would otherwise have required LTC as documented by a physician statement. BEM 405, p 11.

A statement by a physician was not entered into the hearing record to establish that Petitioner's son provided care that would have otherwise required LTC before Petitioner was transferred into LTC. No evidence that the transfer should be excluded from divestment was presented on the record. The transfer of an available asset to Petitioner's son is not a transfer excluded from divestment.

Petitioner's attorney also argues that if the transfer of the available asset was divestment, the Department improperly determined the amount of the divestment by failing to deduct payments made by Petitioner's son towards Petitioner's needs in exchange for the real property.

The Department is directed to cancel a divestment penalty if all the transferred resources are returned and retained by the individual and faire market value is paid for the resources. BEM 405, p 16.

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The hearing record does not establish that the real property was returned for full fair market value and no evidence that title to the real property was transferred back to Petitioner. Therefore, Petitioner has not established that the divestment should be cancelled or reduced based on returned resources.

Further, there is no evidence of an agreement between Petitioner and her son stating that payments for Petitioner's care would constitute consideration in exchange for title to the real property transferred to the son. Petitioner's son received an asset with a readily ascertainable fair market value, and payments toward an undefined obligation do not reduce the uncompensated value of the transfer.

Petitioner's attorney further argues that the Department failed to request verification that Petitioner's son was providing care that would have otherwise required LTC before Petitioner was transferred into LTC, as well as an agreement to pay for future LTC as compensation for the real property that was transferred.

Petitioner bears the burden of establishing her eligibility for benefits. There is no evidence that the Department had reason to suspect any agreements, written or otherwise, existed between Petitioner and her son that should have been considered when determining Petitioner's eligibility for MA LTC benefits. The hearing record supports a finding that the Department properly determined eligibility based on the best information available at the time.

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 Petitioner's eligibility for Medical Assistance (MA) and that a divestment penalty would apply against Long-Term Care (LTC).

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**DECISION AND ORDER**

Accordingly, the Department's decision is AFFIRMED.

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**KEVIN SCULLY**  
**ADMINISTRATIVE LAW JUDGE**  
**Michigan Office of Administrative**  
**Hearings and Rules (MOAHR)**

**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](http://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  
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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