

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2008-21495

Issue No: 2021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 15, 2009

Lapeer County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on April 15, 2009.

ISSUE

Did the Department of Human Services (the department) properly determine that a divestment period applied for claimant's Medical Assistance (MA) application?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On August 31, 2007, a nursing home Medical Assistance application was submitted by claimant's husband on her behalf.

(2) Information on the application provided that the claimant had transferred funds into an annuity on [REDACTED].

(3) The annuity application/policy was sent up to the Medicaid Policy Unit for their evaluation as required by PEM, Item 401.

(4) On January 28, 2008, a determination was received from the Medicaid policy analyst indicating that divestment had occurred.

(5) The annuity was purchased after a policy change that became effective February 8, 2006 requiring annuities purchased or amended on or after that date must name the State of Michigan as the remainder beneficiary.

(6) On February 25, 2008, the claimant, claimant's spouse and her authorized representative were sent notice that Medicaid was opened effective August 1, 2007 but there was a divestment penalty period being applied through August 21, 2008 which not allow for coverage of nursing home costs until after that date.

(7) On April 4, 2008, claimant's representative filed a request for a hearing to contest the department's negative action.

(8) A pre-hearing conference was held on April 11, 2008.

(9) Claimant's attorney argued at the pre-hearing conference that the annuity application date of January 31, 2006 should be considered the purchase date rather than the contract date of February 27, 2006 noted on the policy.

(10) The local office requested a policy clarification from the Medicaid Policy Unit.

(11) On May 23, 2008, the Medicaid Policy Unit sent a policy clarification indicating that Department of Human Services and Department of Community Mental Health used the contract date as the purchase date.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Claimant's representative indicated that claimant and her husband signed and submitted the annuity application designating the beneficiaries and authorizing the payment of [REDACTED] on January 31, 2006. The application fully complied with the requirements of the Program Eligibility Manual on that date. The law requiring the State of Michigan to be named as the remainder beneficiary or second remainder beneficiary after claimant's husband as explained in PEM, Item 401 became effective February 8, 2006, eight days after the beneficiaries were named and submitted to [REDACTED]. Claimant's representative argued that in a good faith effort to comply with subsequent changes in the PEM requirements, the annuity now lists the primary beneficiary as the State of Michigan to the extent of Medicaid benefits received by claimant. The representative argues that the claimants should not be penalized for laws that were enacted between the signing and submission of the annuity contract naming the beneficiaries and the subsequent processing of the annuity by [REDACTED].

PEM, Item 401, page 4 indicates that an annuity is a written contract with a commercial insurance company, establishing a right to receive specified, periodic payments for life or for a term of years. They are usually designed to be a source of retirement income. Only certain types of annuities are excluded as resources.

Converting countable resources to income through the purchase of an annuity or the amendment of an existing annuity on or after 9/01/05, is considered a transfer for less than fair market value unless the annuity meets the conditions listed below:

- An annuity is commercially issued by a company licensed in the United States and issued by a licensed producer (a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance), and
- Is irrevocable, and
- Is purchased by an applicant or recipient for Medicaid or their spouse and solely for the benefit of the applicant or recipient or their spouse, and
- Is actuarially sound and returns the principal and interest within the annuitant's life expectancy, and
- Payments must be in substantially equal monthly payments (starting with the first payment) and continue for the term of the payout (no balloon or lump sum payments); and
- An annuity purchased or amended on or after February 8, 2006 must name the State of Michigan as the remainder beneficiary or as the second remainder beneficiary after the community spouse or minor or disabled child, for an amount at least equal to the amount of the Medicaid benefits provided. The naming of the state in the first or second position must be verified at application or redetermination. (PEM, Item 401, pp. 4-5)

In the instance case, the annuity was actually purchased and the contract signed after February 8, 2006 even though claimants made application January 31, 2006. However, the policy states that the naming of the state in the first or second position must be verified at application. At application, the State of Michigan was not named as a beneficiary. The claimant's representative, in fact, states that in a good faith effort to comply with the subsequent changes and PEM requirements, the annuity now lists the primary beneficiary as the State of Michigan to the extent of Medicaid benefits received by claimant. Claimant certainly had the opportunity to

name the State of Michigan as the beneficiary or second remainder beneficiary after claimant's husband when submitting the annuity application designating the beneficiaries and authorized the payment of [REDACTED] on January 31, 2006. Under the circumstances, the department has established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with department when it determined that the divestment period applied.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, determines that PEM 401, effective 9/01/05, requires the following order for a transfer to an annuity not to be considered a divestment:

- . Is irrevocable, and
- . Is purchased by an applicant or recipient for Medicaid or their spouse and solely for the benefit of the applicant or recipient or their spouse, and
- . Is actuarially sound and returns the principal and interest within the annuitant's life expectancy, and
- . Must name the State of Michigan as the remainder beneficiary or as the second remainder beneficiary if it is purchased or amended on or after February 8, 2006, and
- . Naming the state in the first or second position must be verified at application.

In the instant case, the department has established that the naming of the State of Michigan in the first or second position was not verified at application and that the annuity was purchased on or after February 8, 2006 as the contract was signed February 27, 2006. An application date is not the same as the contract date. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 24, 2009

Date Mailed: May 26, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/vmc

cc:

