

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: 2008-28794

Issue No: 2010

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 2, 2009

Barry County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 July 2, 2009. Claimant was represented by [REDACTED]

ISSUE

Whether the Department of Human Services (department) acted in compliance with department policy when it determined claimant's Medical Assistance (MA) benefits?

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 or about July 11, 2008, claimant applied for MA. Claimant resided in long term care (LTC) at the time of her application. Department A, page 5.

(2) On or about March 27, 2007, claimant purchased an annuity for [REDACTED]. The annuity was to pay claimant [REDACTED] per month for 5 years. First payment was to be paid on April 27, 2007. Department A, page 6-7. Claimant was a resident of adult foster care at the time of the purchase. Claimant's daughter was power of attorney at the time of the purchase of the annuity. Department A, pages 10-12.

(3) August 12, 2008, the department sent claimant written notice that she was eligible for MA but would not receive payment for LTC for the period July 1, 2008 through October 2, 2008 due to divestment of assets. Department A, page 2.

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).

Department manuals provide the following policy statements and instructions for caseworkers:

Divestment means a transfer of a resource by a client or his spouse that:

- Is within a specified time, and
- Is a transfer for **less than fair market value** and
- Is not listed below under transfers that are not divestment.

During the penalty period, MA will not pay the client's cost for:

- LTC services, or
- Home and community-based services, or

- Home Help, or
- Home Health.

MA will pay for other MA-covered services.

Treat transfers by any of the following as transfers by the client or spouse.

- Parent for minor.
- Legal guardian.
- Conservator.
- Court or administrative body.
- Anyone acting in place of, on behalf of, at the request of or at the direction of the client or spouse.
- Joint Owners and Transfers

Purchase of an annuity that is not actuarially sound is a transfer for less than fair market value.

- The transfer was made by the annuity's owner.
- Owner means the person who pays the premium for the annuity.
- Annuitant means the person to whom the annuity payments are made during the guarantee period of the annuity.

An annuity is not actuarially sound if the annuitant is not expected to live until the end of the guarantee period of the annuity.

Guarantee period may be called "annuity certain" or "period certain".

The amount transferred for less than fair market value for an annuity that is not actuarially sound is the amount that would be paid after the end of the person's life expectancy.

LOOK-BACK PERIOD

The first step in determining the period of time that transfers can be looked at for divestment is determining the baseline date.

Once you have determined the baseline date, you determine the look-back period. The look back period is 60 months for all transfers made after February 8, 2006 and 36 or 60 months (depending on the type of resource transferred) for transfers made on or before February 8, 2006.

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.

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 THE WAIVER
- Eligible for Home Health services
- Eligible for Home Help services

A client's baseline date does not change even if one of the following happens:

- The client leaves LTC.
- The client is no longer.
- The client no longer needs Home Help.
- The client no longer needs Home Health.

Monthly cost of LTC in 2008 is set at \$6191.00.

Life expectancy for woman age 96 years is set at 3.01 years.

Program Eligibility Manual (PEM) 405. MA

Social Security Act, Sections 1902(a)(18), 1917

In this case, at hearing, claimant's representative asserted that claimant was a resident of adult foster care at the time the transfer of assets took place and claimant did not expect to go to LTC at that time. After careful consideration, the Administrative Law Judge finds that claimant being a resident of AFC and age 96 at the time of the asset transfer, would reasonably have anticipated a move to long term care. The annuity called for payments that exceeded claimant's life expectancy and so the transfer was for less than fair market value. The transfer occurred during the look-back period. Accordingly, divestment occurred. The department calculated a penalty period that began the month claimant was both in LTC and eligible for MA. The penalty was properly calculated using the amount the annuity exceeded claimant's expected lifetime and

the average monthly cost of private LTC. Accordingly, the department has met its burden of proof and its action must be upheld. Finding of Fact 1-3.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services acted in compliance with department policy. Accordingly, the department's action is **HEREBY UPHELD**.

/s/ _____
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 2, 2009

Date Mailed: September 3, 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 receipt 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.

JAB/db

cc:

