

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 20091665

Issue No: 2019

[REDACTED]

ADMINISTRATIVE LAW JUDGE: **Kandra Robbins**

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MCL 400.37 upon Claimant's request for a hearing. This matter was originally assigned to [REDACTED]. This matter was reassigned to [REDACTED] to complete the decision after complete review of the record. After due notice a telephone hearing was held on August 6, 2009. The Claimant and her attorney, [REDACTED] were present and testified.

ISSUE

Did the Department properly process claimant's Medicaid application?

FINDINGS OF FACT

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

1. The Claimant submitted an application for Medicaid assistance on July 10, 2008.
2. The Claimant submitted an Annuity valued at [REDACTED] from which she receives [REDACTED] per month for 2 years. (Department Exhibit 2).
3. The Department determined that the Claimant was eligible for MA with a deductible on September 8, 2008. (Department Exhibit IV and V).
4. The Department did not submit the Annuity to the Medicaid Eligibility Policy Section until October 6, 2008. (Hearing Summary).
5. On September 17, 2008, the Department received the Claimant's Request for Hearing DHS 1605 protesting the Department's determination of her MA eligibility.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901 - .951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1) An opportunity for a hearing shall be granted to an applicant who requests a hearing because of a denial. MAC R 400.903(2).

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600. 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 (BAM), the Program Eligibility Manual (BEM) and the Bridges Reference Manual (BRM). Department Policy states:

BEM 401 GENERAL DEFINITIONS

MA ONLY

These definitions apply to all trust policy. There are special definitions for Medicaid trusts.

Beneficiary - the person for whose benefit a trust is created.

Grantor or settlor - the person who established the trust. Any person who contributes to a trust is considered a grantor.

Principal or corpus - the assets in the trust. The assets may be real property (e.g., house, land) or personal property (for example, stocks, bonds, life insurance policies, savings accounts).

Trust - a right of property created by one person for the benefit of himself or another. It includes any legal instrument or device that exhibits the general characteristics of a trust but is not called a trust or does not qualify as a trust under state law. Examples of such devices might be annuities, escrow accounts, pension funds and investment accounts managed by someone with fiduciary obligations.

REFERRALS TO MEDICAID ELIGIBILITY POLICY SECTION

Send a copy of the trust, including similar legal instruments such as annuities, to the Medicaid Eligibility Policy Section for evaluation.

This does not apply to the following:

- Prepaid funeral contracts.
- Life insurance funded funerals.
- Healthy Kids categories; see BEM 125, 129 and 131.
- Group 2 Pregnant Women; see BEM 126.
- Limited Liability Corporations (LLC).
- S-Corporations.

Once a trust has been evaluated, a reevaluation is not required unless the local office believes a change has occurred affecting availability of the trust principal or income including a change in department policy. An evaluation of a trust advises local offices on:

- Whether a trust is revocable or irrevocable, and
- Whether any trust income or principal is available.

Advice is only available to local offices for purposes of determining eligibility or an initial assessment when a trust actually exists. Advice is not available for purposes of estate planning including advice on proposed trusts or proposed trust amendments.

In this case, Claimant submitted an MA application on July 10, 2008. The Claimant also provided documentation regarding an annuity with a value of [REDACTED] that provides the Claimant with [REDACTED] per month for a period of 2 years. Department policy requires that the Annuity be submitted to the Medicaid Eligibility Policy Section to be evaluated. The purpose of the evaluation is to determine if any trust income or principal is available for determination of MA eligibility. The Department admitted that the Annuity was not submitted to the Medicaid Eligibility Policy Section prior to processing the Claimant's MA application. There is no explanation for the Department's error in not submitting the Claimant's annuity to the Medicaid Eligibility Policy Section as required by policy.

There is no dispute that the Department failed to comply with policy and submit the Annuity to the Medicaid Eligibility Policy Section. The Department agrees that they committed an error in failing to properly process the Claimant's MA application. Therefore, the Department did not properly determine the Claimant's eligibility.

DECISION AND ORDER

This Administrative Law Judge, based upon the above findings and conclusion of law, decides that the Department did not properly process the Claimant's application because the Department failed to submit the Annuity to the Medicaid Eligibility Policy Section as required by policy. Accordingly, the Department's MA action is reversed. The Department shall:

1. Submit the Claimant's Annuity to the Medicaid Eligibility Policy Section in accordance with Department policy.
2. Process the Claimant's MA application from July 10, 2008 and issue any retroactive MA benefits the Claimant is otherwise eligible to receive.

It is so ORDERED.

_____/s/_____
Kandra Robbins
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 3/17/11

Date Mailed: 3/17/11

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.

[REDACTED]