

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],

Claimant

By: [REDACTED],

[REDACTED]

Reg. No: 2009-33065

Issue No: 2010

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 4, 2009

Ottawa County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

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 November 4, 2009, in Holland. Claimant resides in a long-term care facility and did not appear at the hearing due to failed help. Claimant was represented by [REDACTED]

[REDACTED]

The department was represented by Dan Boter (Program Manager).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUE

Did the department correctly decide that claimant's [REDACTED] was in violation of the department's actuarially sound policy resulting in a divestment of \$44,349 and a period of ineligibility (7.16 months), because claimant did not receive fair value for the funds he used to purchase the annuity?

FINDINGS OF FACT

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

- (1) Claimant resides in a long-term care facility and is an MA-LTC applicant.
- (2) Claimant is 87 years old and entered [REDACTED] on [REDACTED] [REDACTED].
- (3) On August 27, 2008, claimant executed a [REDACTED] authorizing his [REDACTED] ([REDACTED]) to handle his financial affairs.
- (4) On December 28, 2008, claimant's [REDACTED] applied for MA-P/LTC on claimant's behalf.
- (5) At the time of application, the [REDACTED] disclosed to the department that claimant owned a [REDACTED]. The annuity was purchased on July 20, 2007.
- (6) Under the terms of the [REDACTED], claimant paid \$110,000 in return for monthly annuity payments of \$1004.30 for as long as he lives.
- (7) To determine whether claimant was eligible for MA-LTC on the date of application, the department policy required the caseworker to determine whether claimant's annuity was actuarially sound based on department policy.
- (8) The caseworker used the department's actuarial tables (BEM 405). The caseworker determined that the annuity payments which [REDACTED] was obligated to pay claimant exceeded claimant's actuarial life span.
- (9) The caseworker calculated an unused annuity payment payout and concluded that claimant's annuity was not actuarially sound.

(10) Based on the excess income the claimant will receive from his annuity, the caseworker calculated a divestment period (a period of ineligibility) of September 2008 to February 23, 2010.

(11) On June 18, 2009, the caseworker sent a Notice of Case Action (DHS-1605) to the POA.

(13) On July 7, 2009, the POA requested a hearing.

(14) On July 20, 2009, the Program Manager reviewed the caseworker's calculations and determined that the original period of ineligibility was incorrect (too long). The Program Manager determined that the correct period of ineligibility (due to divestment) was September 2008 to April 4, 2009.

(15) Based on the Program Manager's revised calculations, the department began making MA-LTC payments to claimant's LTC on April 5, 2009.

(16) The revised period of ineligibility was approximately 18 months shorter than the original calculation.

(17) Claimant's POA thinks that the department is obligated to make LTC payments for the period September 2008 to April 2009. Claimant was unable to pay for his long-term care for this period.

(18) The Program Manager calculated claimant's divestment period as follows:

**ANNUITY NOT ACTUARILY SOUND**

\$110,000 divided by \$1004.30 (monthly payment) = 109.53 mos.

109.53 months divided by 12 = 9.13 years

LESS: Claimant's life expectancy (per manual) = 5.45 years.

Excess annuity payments (divestment) = 3.68 years.

Based on this calculation claimant's annuity payments exceed his life expectancy by 3.68 years.

Therefore, claimant's [REDACTED] is not actuarially sound.

**PERIOD OF INELIGIBILITY**

3.68 years of overpayments times 12 = 44.16 months.

44.16 months x 1004.30 (monthly annuity payment) = \$44,349.89  
(divested amount)

\$44,349.89 divided by \$6,191 (LTC cost) = 7.16 months of  
ineligibility

Period of ineligibility = September 2008 to March 2009 (7 months,  
4.8 days.

**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).

**MA Only**

Divestment results in a penalty period in MA, **not** ineligibility. Divestment policy does **not** apply to Qualified Working Individuals (BEM 169).

Divestment is a type of transfer of a resource and not an amount of resources transferred.

Divestment means a transfer of a resource (see RESOURCE DEFINED below) by a client or his spouse that:

- . Is within a specified time (see “LOOK-BACK PERIOD” below), and
- . Is a transfer for “LESS THAN FAIR MARKET VALUE,” and

**Note:** See “Annuity Not Actuarially Sound” and “Joint Owners and Transfers” below and BEM 401 about special transactions considered transfers for less than fair market value.

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.
- . Home and community-based services.
- . Home help.
- . Home health.

MA will pay for other MA-covered services.

Do **not** apply a divestment penalty period when it creates an undue hardship. See “UNDUE HARDSHIP” below.

LOA 2 does **not** support this policy. You must manually compute the divestment period and notify the client.

### **RESOURCE DEFINED**

**Resource means all the client’s and his spouse’s assets and income.** It includes all assets and all income, even countable and/or excluded assets, the individual or spouse receive. It also includes all assets and income that the individual (or their spouse) were entitled to but did **not** receive because of action by one of the following:

- . The client or spouse
- . A person (including a court or administrative body) with legal authority to act in place of or on behalf of the client or his spouse.

- Any person (including a court or administrative body) acting at the direction or upon the request of the client or his spouse.

### **TRANSFER OF A RESOURCE**

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. **Not** all transfers are divestment. Examples of transfers include:

- Selling an asset for fair market value (not divestment).
- Giving an asset away (divestment).
- Refusing an inheritance (divestment).
- Payments from a “**MEDICAID TRUST**” that are **not** to, or for the benefit of, the person or his spouse. See BEM 401 (divestment).
- Putting assets or income in a trust.
- Giving up the **right** to receive income such as having pension payments made to someone else (divestment).
- Giving away a lump sum or accumulated benefit (divestment).
- Buying an annuity that is **not** actuarially sound (divestment).
- Giving away a vehicle (divestment).

BEM 405, pp. 1/16.

Also see “Joint Owners and Transfers” for examples.

In this case, claimant’s POA argued that the department’s divestment period was not correct because claimant’s unpaid bill for the period September 2008 through April 2009 is not covered.

After a careful review of the Exhibits and testimony presented in this case, the Administrative Law Judge concludes that the department correctly applied the MA divestment policy and correctly determined that claimant's [REDACTED] is not actuarially sound and resulted in a transfer of claimant's assets (\$44,349) which were not used to pay claimant's long-term care expenses during the claimant's actuarial life.

The department's current policy requires that claimant use the contested \$44,349 to pay his LTC expenses.

The Administrative Law Judge concludes that the calculations submitted by the Program Manager resulting in a period of ineligibility from September 2008 to April 4, 2009 are correct. There is no evidence on this record and arbitrary or capricious action on behalf of the department and therefore, the department correctly decided claimant's MA-LTC eligibility for the period in question.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department acted in accordance with its divestment policy when it imposed a divestment penalty for the period September 2008 through April 4, 2009.

Accordingly, the department's actions are, hereby, AFFIRMED.

SO ORDERED.

/s/ \_\_\_\_\_  
Jay W. Sexton  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: March 12, 2010

Date Mailed: March 12, 2010

**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.

JWS/tg

cc:

