

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: 2009-6239

Issue No: 2021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 6, 2009

Lenawee County DHS

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 conference hearing was held on May 6, 2009.

ISSUE

Did the Department of Human Services (DHS) properly close claimant's caretaker-relative MA on the grounds of excess assets constituting a countable 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) At the time of the relevant action herein, claimant was a caretaker-relative Medicaid welfare beneficiary under the program administered by the Michigan DHS.

(2) On 9/23/08, the DHS issued a verification checklist to claimant requesting verification of assets. The verifications were due 10/2/08.

(3) Unrefuted evidence is that the verifications were not returned by the due date.

(4) On 9/29/08, the DHS issued a closure notice effective 10/11/08.

(5) The negative action took effect.

(6) The department received the verification(s) on 10/8/08.

(7) The DHS forwarded the annuity to the Medicaid Policy Unit on 11/6/08.

(8) On 11/11/08, the Medicaid Policy Unit returned correspondence indicating the annuity is a countable asset. The value of the annuity is \$37,281, which is over the \$3,000 asset limit.

(9) Claimant stipulated at the administrative hearing that the annuity was revocable and that she was the beneficiary of the policy.

(10) Pursuant to subsequent changes, claimant changed the annuity to meet the State of Michigan eligibility requirements. Claimant's MA case closed 10/31/08 and was re-opened 3/1/09.

#### 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).

Applicable policy and procedure to the case herein, states in part:

Converting countable resources to income through the purchase of an annuity or the amendment of an existing annuity on or after 09/01/05, is considered a transfer for less than fair market value unless the annuity meets the conditions listed below:

- 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).
- 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.

In this case, claimant stipulated at the administrative hearing that at the time of closure the annuity was revocable. Claimant further stipulated that the State of Michigan was not a remainder beneficiary or met the other beneficiary requirements as identified in the above PEM Item 404 item. Under the policy cited above, and the Social Security Act, Section 1902(a)(18) and 1917(d)-(e); 42 CFR 435.840-.845 eligibility is not shown and thus, the department's closure must be upheld.

Claimant argued that she was not informed of the necessity to change the beneficiary and would have done so earlier had the department advised her of the same. However, the department is not charged with any duty under policy or law to engage in legal counseling with recipients of welfare. To require the same would be an onerous burden which the department simply could not be held accountable for:

The local office is **not** expected to:

- . Provide estate planning advice, or
- . Determine the effect on eligibility of proposed financial arrangements such as a proposed trust. PAM, Item 105, p. 9.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were correct.

Accordingly, the department's closure for the closed-ended period of time herein was correct, and thus, UPHELD.

/s/ \_\_\_\_\_  
Janice Spodarek  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: June 15, 2009

Date Mailed: June 16, 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 mailing date of the rehearing decision.

JS/cv

cc:

