

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.: 2010-8852
Issue No.: 2010
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 24, 2010
Wayne County DHS (82)

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

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 hearing was held on March 24, 2010. Claimant was represented by her attorney, [REDACTED].

ISSUE

For purposes of imposition of a divestment penalty period upon Medical Assistance (MA), when determining actuarial soundness of an annuity, is life expectancy at the time of purchase or life expectancy at the time of application for MA benefits to be considered?

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 May 2, 2006, 87-year-old claimant purchased a \$175,000 annuity with monthly payments over five years and nine months (5.75 years) starting June 2, 2006.

- 2) On March 31, 2009, claimant filed an application for MA benefits.
- 3) On July 21, 2009, the department approved MA for claimant with a divestment penalty until November 12, 2011.
- 4) On October 16, 2009, claimant filed a hearing request to protest the imposition of a divestment penalty.
- 5) Departmental policy effective January 1, 2006, at PEM Item 405, Page 14, indicated the life expectancy of an 87-year-old female was 5.79 years.
- 6) Departmental policy effective March 1, 2010, at BEM 405, Page 14, indicated the life expectancy of an 87-year-old female was 5.74 years.

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).

Relevant departmental policy regarding MA divestment is as follows:

Divestment results in a penalty period in MA, **not** ineligibility...

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 for the client’s cost for:

- LTC services.
- Home and community-based services.
- Home Help.
- Home Health

MA will pay for other MA-covered services...

BEM Item 405, Page 1.

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: ...

- Buying an annuity that is **not** actuarially sound (divestment)...

BEM Item 405, Page 2.

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...

An annuity is **not** actuarially sound if the annuitant is **not** expected to live until the end of the guarantee period of the annuity. Use the Life Expectancy Tables, EXHIBIT 1 – FEMALE or EXHIBIT II – MALE to make this determination...

Example: John purchased an annuity at age 65 with a guarantee period of 10 years and payments starting at purchase. John’s life expectancy is 16.67 years. The annuity is actuarially sound.

Example: Sally purchased an annuity at age 70 with a guarantee period of 15 years and payments starting five years after purchase. The annuity is **not** actuarially sound because Sally’s life

expectancy at purchase was 15.72 years while the guarantee period ends in 20 years (five year delay plus 15 years).

Example: Diane purchased an annuity at age 65 with a guarantee period of 25 years. The annuity is not actuarially sound because Diane's life expectancy is only 19.50 years.

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.

Example: Diane purchased an annuity at age 65 with a guarantee period of 25 years. The annuity is **not** actuarially sound because Diane's life expectancy is only 19.50 years. The amount transferred for less than fair market value is the value of the payments due in the last 5.5 years of the annuity (25 minus 19.50 = 5.50).

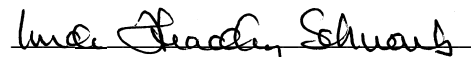
Example: Sally purchased an annuity at age 70 with a guarantee period of 15 years and payments starting five years after purchase. The annuity is **not** actuarially sound because Sally's life expectancy at purchase was 15.72 years while the guarantee period ends in 20 years. The amount transferred for less than fair market value is the value of the payments due in the last 4.28 years of the annuity ($20 - 15.72 = 4.28$).

BEM Item 405, Pages 3 and 4.

In this case, the department (at Exhibit #2) asserts that life expectancy must be determined at the time of application as opposed to life expectancy at the time of purchase. No policy was offered in support of this position. Rather, current policy at BEM Item 405, Page 4, suggests that actuarial soundness is determined based upon life expectancy as configured at the time of purchase. Accordingly, the department's action in this matter cannot stand. Thus, the department may not impose a divestment period based upon the \$175,000 annuity purchased May 2, 2006. Even if policy required the department to use life expectancy tables in existence at the time of application, the penalty must be based upon the amount to be paid after the end of a person's life expectancy (not the whole annuity). See BEM Item 405, Page 5.

DECISION AND ORDER

For purposes of imposition of a divestment penalty period upon Medical Assistance, when determining actuarial soundness of an annuity, life expectancy at the time of purchase must be considered. Accordingly, the Department of Human Services' imposition of a divestment penalty period in response to the purchase of a \$175,000 annuity on May 2, 2006, must be reversed. The department is ordered to provide appropriate benefits consistent with this Order.


Linda Steadley Schwarb
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 30, 2010

Date Mailed: March 31, 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.

LSS/pf

cc:

