

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-32281
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: October 12, 2011
DHS County: Wayne (82-82)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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, an in-person hearing was held on October 12, 2011, in Detroit, MI. Claimant's husband, [REDACTED], appeared and testified along with [REDACTED], a family friend. Claimant was represented by attorney [REDACTED]. The Department of Human Services (Department) was represented by attorney [REDACTED] and witnesses for the Department included [REDACTED].

ISSUE

Whether the Department of Human Services (DHS or Department) properly determined a divestment occurred and established the proper divestment penalty period for purposes of Medical Assistance (MA or Medicaid)?

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 March 28, 2010, [REDACTED] purchased an annuity for \$150,048.20.
2. In July 2010, Claimant went into a nursing home suffering with dementia.
3. On October 6, 2010, an application for benefits was submitted.
4. On April 21, 2011, the Medicaid Policy Unit issued a memo regarding the annuity purchased.

5. On April 26, 2011, the application for benefits was denied and a notice of denial was issued.
6. On May 5, 2011, a request for hearing was received regarding denial of benefits.

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 administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

In the present case, Claimant's attorney challenges the Department's determination regarding an annuity purchased by ██████████ in March 2010 being found as a divestment. Claimant's representative asserted the following: the Department first found a divestment where one did not exist and/or the amount of divestment was incorrectly determined. During the hearing, the Department maintained the actions taken by the Department were in compliance with Department policy.

At issue is an annuity purchased in March 2010 by ██████████ in the amount of \$150,048.20. The annuity term was for ten years and paid a quarterly payment of \$4,472.40.

Claimant's attorney cites BEM 405, specifically page 8, as his basis for no divestment occurring. Claimant's attorney asserts the transfer that occurred in March 2010 was not for purposes of qualifying for Medicaid. The policy cited indicates the Department is to assume all transfers for less than fair market value were for eligibility purposes until convincing evidence is presented that no reason existed to believe long-term care (LTC) or waiver services might be needed. Claimant's husband testified he purchased the annuity for financial reasons and to benefit his children and not to become eligible for Medicaid. Testimony revealed that Claimant was placed in care due to dementia in July 2010. Claimant appears to have been suffering with dementia prior to her placement according to testimony. Claimant was only placed in care after it became impossible for Claimant's family to care for her in her own home.

Claimant's attorney presented documents showing the options available to Claimant's husband at the time of purchasing the annuity. These documents demonstrate a financial benefit for choosing a longer term for an annuity. Obviously, the longer the term for the annuity, the more money is to be made off the original purchase.

After considering Claimant's attorney's arguments regarding alternate reasoning for purchasing the annuity, this Administrative Law Judge is unconvinced. Claimant was ill at the time of purchase and Claimant's husband testified he wanted to leave money for his children. The evidence submitted by Claimant's attorney fails to be convincing.

The Department found the annuity was a divestment since it was for less than fair market value. The Department cited BEM 401, pages 4-5, as their basis for finding a divestment occurred. Specific sections relied upon are in bold below.

Relevant policy BEM 401, pg 4-5:

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.**

The Department first indicated the life expectancy of Claimant's husband rendered a ten-year annuity to not be actuarially sound. At the time of purchase, Claimant's husband was 85 years old. The life expectancy, according to the Department's policy for an 85-year-old male is 5.45 years. Therefore, Claimant's husband's purchase of a ten-year annuity would not be actuarially sound, since the length of the term exceeded the life expectancy of the Claimant's husband.

The Department further asserted the annuity failed to 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 documents provided clearly indicated the State of Michigan is not listed as a remainder beneficiary.

After reviewing and considering the evidence, this Administrative Law Judge concurs with the Department’s determination that a divestment occurred. The transfer was for less than fair market value and the evidence presented failed to convince this Administrative Law Judge that the annuity purchased was for reasons other than qualifying for Medicaid. Further, the annuity is not actuarially sound, since Claimant’s husband’s life expectancy is shorter than the term of the annuity purchased. Finally, the annuity in question fails to list the State of Michigan as the remainder beneficiary as required.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides properly determined a divestment had occurred and properly determined the divestment period since the entire annuity purchased failed to meet the requirements as outlined above in policy.

Accordingly, the Department’s decision is hereby UPHELD.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: October 26, 2011

Date Mailed: October 26, 2011

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

JWO/pf

cc:

