

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201266228
Old Reg. No: 201248305
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: May 31, 2012
County: Kent County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

DECISION ON ORDER FOR RECONSIDERATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MCL 400.37; and MAC R 400.919 upon an Order Granting the Department's Request for Reconsideration Order issued December 17, 2012. The Department of Human Services (Department) was represented by Assistant Attorney General [REDACTED]. Claimant was represented by [REDACTED], Attorney at Law.

ISSUE

Did the Department properly determine that Claimant had divested herself of assets to warrant the imposition of a penalty for purposes of Medical Assistance (MA) for Long Term Care (LTC)?

FINDINGS OF FACT

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

1. The Department received Claimant's MA or "Medicaid" application on November 30, 2011.
2. Proper verification information was provided to the Department.
3. On January 18, 2012, the Department's Medicaid Policy Unit (MPU) determined that Claimant's husband purchased an annuity for \$ [REDACTED] that was not actuarially sound on December 7, 2011. According to the MPU, Claimant's husband was 87 (eighty-seven) years old at the time and his life expectancy was 4.73 years. The MPU found that the annuity would make monthly payments of \$ [REDACTED] for 5 (five) years beginning January 7, 2012. The MPU found that a divestment had occurred.

4. The annuity in question did not name the State of Michigan as a beneficiary.
5. On January 20, 2012, the Department mailed Claimant a Notice of Case Action (DHS-1605) which indicated that the annuity was a divestment.
6. Claimant's attorney requested a hearing challenging the Department's divestment determination on April 19, 2012.
7. A telephone hearing was held on May 31, 2012.
8. The Administrative Law Judge issued a Hearing Decision on July 2, 2012 which found that a divestment had occurred but reversed the Department's determination of the divestment penalty due to a miscalculation of the life expectancy.
9. On July 24, 2012, the Department filed Respondent's Motion for Reconsideration or Rehearing and Respondent's Brief in Support. The Department argued that the Hearing Decision did not address the fact that the State was not named as a beneficiary on the annuity. Claimant did not file a response.
10. On December 17, 2012, Supervising Administrative Law Judge Marya A. Nelson-Davis issued an Order Granting Request for Reconsideration.

CONCLUSIONS OF LAW

The Conclusions of Law as set forth in the original Hearing Decision mailed on July 2, 2012, are hereby incorporated by reference. In addition, BEM 401 at page 4 (effective September 1, 2005) governs transfers to an annuity and, in pertinent part, provides:

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. An annuity that does not name the state as the remainder beneficiary is a divestment of the total purchase price.**

In the instant appeal, the record in this matter was undisputed that the annuity at issue did not comply with the requirements set forth in BEM 401 page 4 because it did not “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.” Because the annuity purchased by Claimant’s spouse did not name the State of Michigan as a beneficiary it is not actuarially sound and is a divestment for the full amount of the annuity. BEM 401, p 4; See also 42 U.S.C. §1396p (c)(1)(F).

In addition, as the annuity in question did not name the State of Michigan as a beneficiary it is a transfer for less than market value and the entire amount of the annuity is a divestment which carries a penalty period. BEM 405. Accordingly, this Administrative Law Judge finds that the Department’s determination that the annuity purchased on December 7, 2011 was not actuarially sound and resulted in a divestment of \$ [REDACTED] was correct. In addition, this Administrative Law Judge finds that the period of ineligibility is based on the full amount of the purchase price.

Based on the substantial, material and competent evidence on the whole record, this Administrative Law Judge finds that the Department correctly followed the applicable policies.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department acted properly when it determined that the annuity purchased by Claimant’s spouse was a divestment for the full amount of the annuity (\$ [REDACTED] because it does not return all principal and interest within the life expectancy of the annuitant, it fails to name the State of Michigan as a beneficiary and results in a penalty period.

Accordingly, the Department’s determination is **AFFIRMED**.

IT IS SO ORDERED.

/s/

C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 1/18/13

Date Mailed: 1/18/13

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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

CAP/cr

cc:

