

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013-55584
Issue No.: 2010
Case No.: ██████████
Hearing Date: October 24, 2013
County: Wayne (82)

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a hearing was held on October 24, 2013, in Detroit, Michigan. Participants on behalf of Claimant included Claimant's Authorized Hearing Representative, Attorney ██████████, and Claimant's daughter with Power of Attorney, ██████████ ██████████. Participants on behalf of the Department of Human Services (Department) included ██████████, APS, and ██████████, APW.

ISSUE

Did the Department properly determine that the Department would not pay Claimant's long-term care and home and community-based waiver services due to transferring assets or income for less than fair market value?

FINDINGS OF FACT

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

1. Claimant purchased ██████████ ██████████" on February 7, 2007 and it was annuitized on August 4, 2009. (Exhibit A, p.5)
2. Claimant purchased ██████████ on June 13, 1996 and it was annuitized on June 19, 2006 (Exhibit A, p.4).
3. On June 25, 2013, the Department issued a Notice of Case Action to Claimant, stating that the Department would not pay Claimant's long-term care and community-based waiver services from April 1, 2013 through February 3, 2014 due

to Claimant or Claimant's spouse transferring assets or income for less than fair market value.

4. On June 25, 2013, Claimant requested a hearing regarding the Department's action.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

BEM 405, (1-2013) instructs:

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).

The first step in determining the period of time that transfers can be looked at for divestment is determining the **baseline date**; see Baseline Date in this item.

Once the baseline date is established, you determine the look-back period. The look back period is 60 months prior to the baseline date for all transfers made after February 8, 2006.

Entire Period

Transfers that occur **on** or **after** a client's baseline date must be considered for divestment. In addition, transfers that occurred within the 60 month look-back period must be considered for divestment.

In the present case, Claimant purchased [REDACTED]" on February 7, 2007 and it was annuitized on August 4, 2009. (Exhibit A, p.5) Claimant purchased [REDACTED]" on June 13, 1996 and it was annuitized on June 19, 2006 (Exhibit A, p.4). The Department representatives testified at the hearing, consistent with the Hearing

Summary, that the above-described annuities were the two annuities considered in determining the alleged divestment. The parties stipulated at the hearing that the baseline date to be considered for the look-back period is April 1, 2013.

On June 25, 2013, the Department issued a Notice of Case Action to Claimant, stating that the Department would not pay Claimant's long-term care and community-based waiver services from April 1, 2013 through February 3, 2014 due to Claimant or Claimant's spouse transferring assets or income for less than fair market value. However, Claimant did not transfer assets or income within the 60-month look-back period, as the annuities were purchased prior to April 1, 2008. (It is noted that the look-back period would not be as long as 60 months for the annuity purchased on June 13, 1996.) Therefore, the Department was not correct in considering the two above-described annuities for divestment, as the purchases were made outside of the look-back period.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it determined that the Department would not pay Claimant's long-term care and home and community-based waiver.

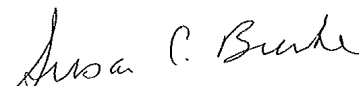
DECISION AND ORDER

Accordingly, the Department's decision is

REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Make a new determination as to the Department paying Claimant's long-term care and home and community-based waiver services from April 1, 2013 through February 3, 2014.
2. Issue a new Notice of Case Action to Claimant and Claimant's Authorized Hearing Representative, informing them of the Department's determination, in accordance with Department policy.



Susan C. Burke
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: October 30, 2013

Date Mailed: October 31, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

SCB/tm

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]