

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-30343
Issue No(s): 2007; 2008
Case No.: [REDACTED]
Hearing Date: April 8, 2014
County: Ontonagon

ADMINISTRATIVE LAW JUDGE: MICHAEL S. NEWELL

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 telephone hearing was held on April 8, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], .APW.

ISSUE

Did the Department properly deny Claimant's October 4, 2014 application?

Does a divestment penalty apply in this case?

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 applied October 4, 2014 for long term MA care.
2. The application listed in \$ [REDACTED] in bank assets.
3. Weisinger had filled out the application and listed these assets based on outdated information.
4. On November 18, 2014, the Department issued a Notice of Case Action, denying Claimants application due to excess assets.
5. On December 6, 2013, Claimant submitted a new application.
6. In March 2004, Claimant purchased an annuity.

7. On or around December 1, 2010, Claimant transferred the annuity for less than its fair market value.
8. Claimant made the transfer to obtain money to pay bills and for other things.
9. The transfer was not made to any friends or family of Claimant but was a transfer that was made to a third party.
10. Claimant lost money from the transfer.
11. Following the transfer, Claimant could not access the annuity.
12. On December 12, 2013, the Department denied Claimant's December 1, 2013 application because the value of the annuity was found to be over the asset limit.
13. On January 14, 2013, the Departments Legal Services, Trust, and Annuities Unit determined that the annuity transfer was a divestment.
14. On February 5, 2014, Claimant requested hearing.

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.

Additionally, the November 18, 2014 denial of the October 4, 2014 application is affirmed. The Department relied on the information on the application in issuing the denial

The Department's decision regarding the annuity is incorrect. The December 12, 2013 denial Notice states that the annuity is over the asset limit. The Department apparently decided on or around January 14, 2014 that the annuity would subject Claimant to a divestment penalty instead, but there is no indication that the Department issued a Notice regarding this decision. The annuity cannot be both a countable asset and a divested asset. To hold otherwise would mean that Claimant is penalized for having the asset and penalized for not having it. Regardless, the annuity is not a countable asset because the funds are not available to Claimant (BEM 400, p 1-2) nor a divested asset that would subject Claimant to a divestment penalty because Claimant did not make the transfer or change for purposes of MA divestment. BEM 405, p 11 states that a transfer made for purposes other than for MA eligibility are not divestment. The

change at issue to the annuity was a bad investment decision that caused Claimant to lose money. Claimant did not make this change for MA purposes.

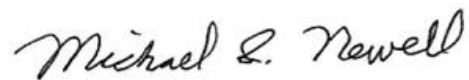
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied the December 1, 2013 application.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the November 18, 2014 denial of the October 4, 2014 application and **REVERSED IN PART** with respect to December 12, 2013 denial of the December 1, 2014 application.

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. Reinstate the December 1, 2013 application and redetermine eligibility consistent with this decision and policy.



Michael S. Newell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 1, 2014

Date Mailed: May 1, 2014

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

MSN/las

cc:

