

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-002651
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: September 02, 2014
County: MACOMB-36

ADMINISTRATIVE LAW JUDGE: Lynn Ferris

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 September 2, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. [REDACTED] also appeared as a witness. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist and [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly close the Claimant's Medical Assistance due to excess assets?

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 Claimant is an ongoing recipient of Medicaid and Medicare Cost Sharing benefit programs.
2. At a Redetermination, the Claimant advised the Department on March 17, 2014 that she had an Annuity. Exhibit 1
3. The Department denied the Claimant's request for the Medicare cost savings program and medical assistance based on excess assets.
4. The asset limit for the Claimant was determined by the Department to be \$ [REDACTED] based upon the Medicare Cost Savings Program. Exhibit 5

5. The Claimant made an initial premium payment of [REDACTED] to a [REDACTED] account on January 2, 2013. Exhibit 1, p.5. The Annuity provisions included a surrender charge schedule. Exhibit 1
6. On May 6, 2014, the Office of Legal Services Trust and Annuities Unit of the Department of Human Services reviewed the Claimant's Annuity, [REDACTED]. The Department's decision noted that "the Annuity was purchased on [REDACTED] and that the contract had not yet been annuitized (converted into an elected schedule of payments certain) and [REDACTED] can surrender (cash in) this annuity. Payments are scheduled to start [REDACTED]. The cash surrender value of this Annuity is an available countable asset for [REDACTED]" Exhibit 4
7. The Department closed the Claimant's medical assistance effective May 6, 2014.
8. The Claimant requested a timely hearing on May 13 2014 protesting the cancellation of her Medicaid medical assistance benefits.

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 Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Additionally, the issue in this case is whether the Claimant's Annuity/IRA constituted an available asset such that this asset exceeded the asset limit established for medical assistance eligibility.

The Claimant received funds when her employer merged with another hospital system and she was required to establish an IRA/Annuity, which she did on [REDACTED] by a deposit of [REDACTED].

At the hearing, the Claimant testified that she intended to not withdraw any of the money placed in this IRA/Annuity so that she would receive [REDACTED] monthly after she reached the age of [REDACTED]. The Claimant's testimony was credible as to what she intended to do; however, the issue is not what the Claimant intended but whether the written terms of the Annuity contract allowed the Claimant to have access to the IRA/Annuity

funds or whether she could withdraw the funds in the IRA subject to prescribed penalties.

Applicants for medical assistance must meet the asset requirements found in Department policy. The asset limit used by the Department was for the Medicare Savings Program for an asset group of one, which was [REDACTED]. For all other SSI related MA categories, the asset limit is [REDACTED] for a group of one. BEM 400(2/1/14) pp.7. In its decision denying the Claimant's application, the Department determined that the Claimant's application had to be denied because her IRA/Annuity exceeded the asset limit of [REDACTED].

The Department in making its determination must determine whether the asset is available in order to count towards the asset limit. Policy found in BEM 400 provides:

An asset must be available to be countable.

Assets mean cash, any other personal property and real property. **Real property** is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. **Personal property** is any item subject to ownership that is **not** real property (examples: currency, savings accounts and vehicles).

Available means that someone in the asset group has the legal right to use or dispose of the asset.

Assume an asset is available unless evidence shows it is **not** available.
BEM 400, pp. 6, 8.

The Claimant established this IRA/Annuity on [REDACTED] by a deposit of [REDACTED]. The IRA/Annuity policy was provided by the Claimant to the Department. Exhibit 1 pp. The Policy Data Page of the Annuity provided to the Department, which forms a part of the Annuity documents, sets forth a surrender charge schedule which lists varying percentage based surrender fees based upon the year the surrender is made. This provision notes that a Surrender Charge will apply only if the amount of the withdrawal exceeds the greater of (A) 10% of the Accumulation Value as of the last Policy Anniversary (10% of the premium Payment if the withdrawal is made in the first policy year), less any prior Partial Withdrawals, made during the current Policy Year, that were free of Surrender Charges, OR (B) 10% of the current Accumulation Value, at the time of the withdrawal, less any prior Partial Withdrawals, made during the current Policy Year that were Free of Surrender Charges OR (C) that portion of the current Accumulation Value, at the time of the withdrawal, that exceeds the total Premium Payments made to this Policy.

In the Contents Section of the IRA/Annuity policy, various terms and answers to specific questions are provided. In the Definition Section titled Charges and Distributions, the following question is asked and answered:

“Can you make a partial withdrawal from this Policy?”

The answer provided is: “Yes. On any Business Day, before the Annuity Commencement Date (January 2, 2049) and after this Policy has an Accumulation Value, you may request a full surrender of the Accumulation Value, less any Surrender Charges, Policy Service Charges and /or additional fees and charges (including rider charges) that may apply. Surrender charges are explained in Section 4.6 and on the Policy Data Page.”

In Section 4.4 of the Charges and Distributions section, the following question is asked and answered:

“Can you make a partial withdrawal from this policy?”

Yes. After this policy has an Accumulation Value, you may request a partial withdrawal by sending us your request at least 30 days before the Annuity Commencement Date. The Partial Withdrawal may be for a selected amount or a percentage of the Accumulation Value. The minimum amount you may withdraw is shown on the Policy Data Page. You must indicate how it is to be withdrawn from the Allocation Alternatives and/or from the DCA Advantage Account. The answer also indicates that this Surrender Charge will be assessed as shown on the Policy Data Page.

Lastly a Policy Information Details page notes the Accumulation Amount of the Annuity as of [REDACTED] as [REDACTED] with a surrender charge of [REDACTED], and a net Surrender Value of [REDACTED] 8. The Maximum Available with no surrender Charge was [REDACTED].

As required by Department policy, the Office of Legal Services Trust and Annuities Unit must be asked to review the Annuity to determine whether or not it was an available asset. On May 6, 2014, the following determination was made by this office:

[REDACTED] purchased this Annuity on [REDACTED]. This contract has not yet been annuitized (converted into an elected schedule of payments certain), and [REDACTED] can surrender (cash in) this contract. Payments are scheduled to start on [REDACTED]. The cash surrender value of this Annuity is an available countable asset for Ms. [REDACTED]. This is an evaluation of the trust/Annuity only. This is not a determination of eligibility.” Exhibit 4 BEM 401, (10/1/13) pp.2.

At the hearing, the Claimant was allowed to present a letter from her agent at the [REDACTED]. The letter was dated August 8, 2014 and states:

“This letter is to confirm that [REDACTED] has an Annuity contract of [REDACTED] with the [REDACTED]. She entered a

binding contract that states she will begin getting funds monthly after her 60th birthday. She has no access to these funds before then whatsoever.”
Claimant Exhibit A.

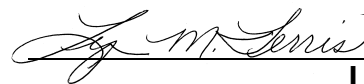
This letter from the agent whose title with the company indicates that he is a financial service professional for [REDACTED] does not reference any contractual provisions in the Annuity documents that support his statement “that she has no access to these funds whatsoever”, therefore, this letter does not change the written policy provisions set forth above that indicate that partial withdrawals and surrender of the policy may be made. It is also noted that at the time the Department made its decision to deny the Claimant’s application for Medicaid and Medicaid costs sharing, it did not have the Agent’s August 8, 2014 letter. It is also, however, determined that this information would not have changed the outcome or the determination of the Department.

The analysis and reading of the entire IRA/Annuity information provided by the Claimant, indicates that the IRA/Annuity is available to the Claimant for partial withdrawals and/or surrender, notwithstanding the Claimant’s stated intent not to withdraw any such funds so that she would receive [REDACTED] monthly after age [REDACTED]. Unfortunately, the Annuity documents do not provide for such interpretation.

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 acted in accordance with Department policy when it closed the Claimant Medical Assistance case due to her assets exceeding the asset limit established in BEM 400.

DECISION AND ORDER

Accordingly, the Department’s decision is AFFIRMED.



Lynn Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **10/01/14**
Date Mailed: **10/01/14**
LMF/tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

cc:

