

6. On May 6, 2014, a pre-hearing conference was held and no resolution was reached.

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.

In the instant case, the Department sent a copy of an annuity purchased by the Claimant to the Department policy office for review. The Department policy office determined the annuity failed to meet the requirements of a properly formed annuity based upon the annuity not being actuarially sound and the annuity failed to list the State of Michigan as beneficiary in accordance with policy. On May 6, 2014, Claimant's attorney sent a letter of modification to the annuity to include the State of Michigan as a first beneficiary in an attempt to modify at least the beneficiary issue noted by the Department policy office. While this Administrative Law Judge (ALJ) appreciates Claimant's attorney's attempt to remedy the beneficiary issue, this ALJ must utilize the information available at the time the Department's decision was made.

Claimant's attorney asserts the annuity may not be actuarially sound or may have failed to list the State of Michigan as a beneficiary but the application of the Department's policy to Claimant's case creates an undue hardship. Claimant's attorney asserts that, at the time Claimant purchased the annuity, she had already spent \$400,000 of her own money to privately pay for a senior living community. At the time of purchase of the annuity, Claimant was not aware it would not meet the policy requirements. The annuity at this point cannot be undone and it does provide an ongoing income stream. Claimant's attorney argues to label the annuity as a divestment is inappropriate and the annuity should be viewed in its true form as an income stream. Claimant's attorney asserts the annuity meets the divestment exception since, at the time it was created/purchased, Claimant could not have anticipated the severe illness she would suffer in the future and did not, therefore, purchase it to become eligible for MA benefits but rather for another purpose. Further, Claimant's attorney asserts Claimant suffers from Alzheimer's disease and would experience trauma or worse if an involuntary discharge were to occur.

There appears to be no dispute regarding the annuity not meeting the guidelines for a properly formed annuity. The issue arises as to whether or not it would be proper for

the Department to determine the annuity as a divestment. As noted above, Claimant's attorney asserts the annuity should be viewed only as an income stream and not a divestment and/or, in the alternative, a hardship exception should be granted because Claimant purchased it, not as a way to become eligible for MA benefits, but for another purpose, as she could not have foreseen that she would suffer a severe illness.

First, Claimant's attorney asserted the annuity should be viewed as an income stream and not a divestment. This assertion falls flat when applying policy. The policy does allow for steady income streams such as annuities. The issue in this case is that it fails to be actuarially sound and fails to list the State of Michigan as a beneficiary. While it would benefit Claimant for this Administrative Law Judge to ignore the obvious flaw in the annuity and simply find it as an income stream, there is no legal basis for this Administrative Law Judge to do so. This Administrative Law Judge is sympathetic to Claimant's argument but there is no legal authority that allows for this court to turn a blind eye to the simple fact that the annuity was ill formed and fails to be actuarially sound.

Second, Claimant's attorney asserted the annuity should still be exempt from being found as a divestment as Claimant purchased the annuity prior to the application for MA benefits and could not have known at the time of purchase that she would suffer a severe illness. Claimant's attorney is asserting BEM 405 transfers for another purpose.

BEM 405 (October 2013), p. 11, indicates transfers exclusively for a purpose other than to qualify or remain eligible for MA are **not** divestment. The Department is to assume transfers for less than fair market value were for eligibility purposes until the client or spouse provides convincing evidence that they had no reason to believe long-term care (LTC) or waiver services might be needed. The policy includes the following example:

*Mr. Smith, age 40, was in good health when he gave his vacation cottage to his nephew. The next day Mr. Smith was in an automobile accident. His injuries require long-term care. The transfer was **not** divestment because Mr. Smith could **not** anticipate his need for LTC services.*

In Claimant's case, this assertion again fails to be convincing. Claimant's medical condition is Alzheimer's disease. Claimant has been receiving treatment for this condition for years, according to testimony. Given that Claimant was 80 years old and suffering from Alzheimer's disease at the time of purchase of the annuity, it would seem unreasonable to assume that Claimant would not have foreseen the possibility of illness resulting in long-term care. As noted by Claimant's attorney, she had already moved herself into a senior living facility and spent \$400,000 of her own money to privately pay for a senior living community prior to purchasing the annuity. Therefore, the assertion the purchased annuity was for another purpose is not supported.

The third assertion made by Claimant's attorney is the imposition of divestment would present an undue hardship on Claimant's health. Claimant's attorney, as stated above, asserts that the involuntary discharge from Claimant's current home if not approved for MA benefits would be detrimental to Claimant's health. Claimant's attorney presented two letters from the facility where Claimant currently resides indicating the facility will be taking steps to begin the involuntary discharge proceedings if MA is not approved.

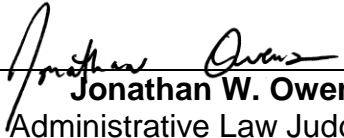
According to BEM 405 (October 2013), p. 16, the Department should waive the penalty if it creates undue hardship. The Department is to assume there is no undue hardship unless presented with evidence to the contrary. Department policy specifically defines such evidence of undue hardship when the client's physician (M.D. or D.O.) says the necessary medical care is **not** being provided, and the client needs treatment for an emergency condition. A medical emergency exists when a delay in treatment may result in the person's death or permanent impairment of the person's health. A psychiatric emergency exists when immediate treatment is required to prevent serious injury to the person or others.

The only evidence offered to support a hardship claim was letters from the facility currently caring for Claimant indicating the possibility of involuntary discharge proceedings being implemented if Claimant were not granted MA benefits. No evidence was submitted that would satisfy the requirements of BEM 405, specifically, evidence from Claimant's physician that demonstrated necessary medical care was not being provided and Claimant needed treatment for an emergency condition. Therefore, a hardship request cannot be granted.

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 determined that Claimant's annuity purchase resulted in a divestment.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.



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

Date Signed: **7/9/2014**

Date Mailed: **7/9/2014**

JWO / pf

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