

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 13-000232
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: February 3, 2015
County: Saginaw

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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, an in-person hearing was held on February 3, 2015, from Saginaw, Michigan. Claimant, represented by [REDACTED] and [REDACTED], personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Assistant Attorney General [REDACTED] and Eligibility Specialist [REDACTED].

ISSUE

Did the Department properly add an additional divestment penalty period?

FINDINGS OF FACT

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

1. On December 20, 2013, Claimant's Authorized Hearing Representative filed for Medicaid long Term Care. Annuity contract number [REDACTED] [REDACTED] was included with the application.
2. On January 15, 2014, the local Department emailed annuity contract number [REDACTED] to the Trusts and Annuities Unit for determination.
3. On January 28, 2014, the Trusts and Annuities Unit determined that the Annuity contract number [REDACTED] was subject to divestment. Adding the additional divestment, the new divestment period has a begin date of 12/1/2013 through November 10, 2014.
4. On April 14, 2014, Claimant and Claimant's Authorized Hearing Representatives were notified of the Department's actions.

5. On May 6, 2014, a request for a hearing was filed by the Claimant's Authorized Hearing Representatives, contesting the Department's negative 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 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.

The sole issue in this case is whether Annuity contract number [REDACTED] was "amended" within the meaning of BEM 401, p 5 (10/1/2013).

The annuity at issue here lists the payee as [REDACTED] with primary beneficiaries [REDACTED]-child-50% and [REDACTED]-child-50%, effective June 7, 2013, effective January 8, 1998.

The Department points to BEM 401, page 5, regarding Transfers to an Annuity effective 9/1/2005, which states:

Converting countable resources to income through the purchase of an annuity or the "amendment" of an existing annuity on or after 9/1/2005, is considered a transfer for less than fair market value unless . . . the State of Michigan is listed as the remainder beneficiary. BEM 401, p 5 (10/1/2013), emphasis added.

The Department relies on BEM 401, p 5, in finding that the annuity does not meet all of the conditions and is subject to divestment because the annuity does not name the State of Michigan as the first remainder beneficiary.

The document relied on by the Department for this analysis was submitted as Department's Exhibit page 18 which is simply a form letter from [REDACTED] for [REDACTED] indicating the primary beneficiaries are to receive 50%. There is no change.

Since there was no amendment and no change to the annuity, it does not need to list the State of Michigan as the remainder beneficiary.

Claimant contends that since there was no amendment to the annuity on June 7, 2013, then the original annuity of January 8, 1998, stands and the annuity is not subject to a divestment analysis or divestment penalty.

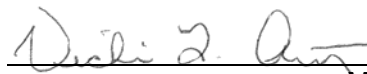
This Administrative Law Judge finds the Department has failed to meet its burden. The Department failed to submit a signed amendment to annuity contract number [REDACTED]. The Department did not submit any documentation showing any change or amendment to annuity contract number [REDACTED]. Therefore, the Department failed to present the necessary evidence to establish the Department's case and failed to satisfy its burden of showing that it acted in accordance with Department policy when it found the annuity was subject to a divestment penalty.

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. Redetermine the divestment penalty without considering Annuity contract number [REDACTED] in accord with policy.



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/23/2015**

Date Mailed: **2/23/2015**

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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 48909-8139

cc:

