

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-016731
Issue No.: MEDICAID - ELIGIBILITY
Case No.: [REDACTED]
Hearing Date: February 11, 2015
County: ALLEGAN

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 February 11, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], daughter and [REDACTED] [REDACTED], son in law, was also present. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Assistance Payments Supervisor, and [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly determine Claimant's eligibility for Medical Assistance (MA)?

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 September 4, 2014, a Medicaid application was filed on Claimant's behalf.
2. Verifications for an annuity were requested and returned as additional information was requested.
3. On October 30, 2014, the Department's Office of Legal Services and Policy determined that the annuity contract did not meet all of conditions listed in policy BEM 401, therefore, the total purchase price should be considered a divestment.
4. The annuity contract was not annuitized until October 1, 2014, therefore, the contract value of \$ [REDACTED] was considered an asset for the application month.
5. On October 30, 2014, a Health Care Coverage determination Notice was issued to Claimant stating MA was denied for September 2014 due to assets in excess of program limits, MA would be approved for October 1, 2014 and ongoing with a

monthly patient pay amount of \$ [REDACTED] and a divestment penalty would be applied for October 1, 2014, through December 7, 2014.

6. On November 14, 2014, a hearing request was filed on Claimant's behalf contesting the Department's determination.

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 Department has a responsibility to provide eligibility information on all programs in which a client is interested. However, the local office is not expected to: provide estate planning advice, provide funeral planning advice, or determine the effect on eligibility of proposed financial arrangements such as a proposed trust. BAM 105, 10-1-2014, p. 12.

The applicable asset limit for Medicaid Extended Care (MA extended care) for the group size of one is \$2,000. BEM 400, 10-1-2014, p. 7.

An annuity is a written contract establishing a right to receive specified, periodic payments for life or for a term of years. BEM 400, p. 24.

Annuities are similar legal devices to trusts. Annuities are a written contract with a commercial insurance company, establishing a right to receive specified, periodic payments for life or for a term of years. They are usually designed to be a source of retirement income. Only certain types of annuities are excluded as resources. Policy in BEM 401 Trusts applies, including referring annuities to the Trust and Annuities Unit. BEM 400, p. 25.

The local Department office is to send all trusts and annuities to the Trust and Annuities Unit for evaluation. BEM 400 p. 27.

Converting countable resources to income through the purchase of an annuity or the amendment of an existing annuity on or after 09/01/05, is considered a transfer for less than fair market value unless the annuity meets the conditions listed below:

- Is commercially issued by a company licensed in the United States and issued by a licensed producer (a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance), and
- Is irrevocable, and
- Is purchased by an applicant or recipient for Medicaid or their spouse and solely for the benefit of the applicant or recipient or their spouse, and
- Is actuarially sound and returns the principal and interest within the annuitant's life expectancy, and
- Payments must be in substantially equal monthly payments (starting with the first payment) and continue for the term of the payout (no balloon or lump sum payments).
- An annuity purchased or amended on or after February 8, 2006 must name the State of Michigan as the remainder beneficiary, or as the second remainder beneficiary after the community spouse or minor or disabled child, for an amount at least equal to the amount of the Medicaid benefits provided. The naming of the state in the first or second position must be verified at application or redetermination. An annuity that does not name the state as the remainder beneficiary is a divestment of the total purchase price.

BEM 401, 7-1-2014, p. 5.

In this case, the Department's Office of Legal Services and Policy determined that the annuity contract did not meet all of conditions listed in policy BEM 401, therefore, the total purchase price should be considered a divestment. Specifically, the annuity did not meet all of the conditions because the State of Michigan was not named as the first remainder beneficiary. In part, it was noted that Claimant purchased the annuity of February 20, 2007, Claimant began to receive payments on October 1, 2014, and she does not have a community spouse or minor or disabled child.

The Assistance Payments Supervisor also noted that when the State of Michigan was later named as the beneficiary, the Department was able to get the decision reversed and the divestment penalty was removed as of the date of this change was made, December 5, 2014.

Claimant's daughter contests the Department's determination and testified the main thing they are trying to get is to have the divestment penalty dropped. Claimant's daughter noted that the nursing home caseworker suggested that the divestment penalty should be made retroactive to August 2014 because if the Department had told them the State of Michigan needed to be named as a beneficiary they would have done that sooner and the penalty would have been avoided. Claimant's daughter's testimony indicated they had been working toward getting Medicaid for the Claimant since July 2014.

The Department credibly testified there was no earlier MA application(s) for August 2014 or any retroactive MA request with the September 4, 2014 application for August 2014. A review of the September 4, 2014 application itself also shows no medical expenses were reported for the past three months. Accordingly, MA eligibility for August 2014 cannot be considered because there has been no application for MA for that month.

Additionally, the Department confirmed that because the divestment did not occur until October 1, 2014, the divestment penalty could not be applied earlier than October 1, 2014. The annuity contract was not annuitized until October 1, 2014, therefore, the contract value of \$17,729 was considered an asset for the application month.

Lastly, this ALJ understands that if Claimant's daughter had known she would have done things differently and earlier, such as having the State of Michigan named as the first remainder beneficiary right away. However, the BAM 105 policy is clear that local office is not expected to determine the effect on eligibility of proposed financial arrangements. Accordingly, the divestment penalty cannot be removed because the Claimant's daughter would have acted differently if she known to do things differently/earlier.

The Department has provided sufficient evidence that Claimant's MA eligibility was correctly determined based on the verified asset and income information for September 4, 2014, MA application.

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 Claimant's eligibility for MA.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/5/2015**

Date Mailed: **3/5/2015**

CL/hj

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:

