



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 1, 2016
MAHS Docket No.: 16-000238
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION

Following Petitioner’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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on March 14, 2016, from Detroit, Michigan. Petitioner was represented by her authorized hearing representatives (AHRs): [REDACTED] the accounts receivable bookkeeper at the nursing care facility in which Petitioner resides, and [REDACTED], accounts receivable supervisor at the facility. Petitioner’s nieces, [REDACTED], who is also Petitioner’s agent (Agent) under a March 21, 2002 durable power of attorney, and [REDACTED] [REDACTED], testified on Petitioner’s behalf via telephone conference. The Department of Health and Human Services (Department) was represented by [REDACTED] [REDACTED] Eligibility Specialist.

ISSUE

Did the Department properly process Petitioner’s November 2, 2015 application for long-term care (LTC) benefits under the Medicaid (MA) program and conclude that Petitioner’s annuity was a divestment of assets resulting in a divestment penalty?

FINDINGS OF FACT

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

1. Petitioner’s birthdate is August 12, 1921. She is unmarried.
2. On May 23, 1996, an annuity was issued to Petitioner through [REDACTED] [REDACTED] (Jackson) under policy number [REDACTED] (Exhibit E).

3. On or about August 27, 2010, Jackson sent Petitioner a summary of benefit that identified Petitioner as the annuitant of the annuity at issue; the type of annuity as a life and 10 year period certain; the value as [REDACTED]; the first payment date as September 26, 2010; the last certain payment date as August 26, 2020; and the annuity benefit as \$1041.96 monthly. (Exhibit E).
4. At the time of the first annuity payment, Petitioner was [REDACTED] years old.
5. On October 21, 2014, Petitioner entered a LTC facility.
6. On November 2, 2015, the Department received a MA application for nursing facility patients, DHS-4574, submitted on Petitioner's behalf.
7. On November 24, 2015, the Department worker processing Petitioner's application submitted the following documents concerning the Jackson annuity to its Office of Legal Services, Trust and Annuities Unit: (i) an August 27, 2010 letter from Jackson to Petitioner indicating that it had recently sent her a communication regarding the maturity or income date on the annuity and the initiation of her income payments from the annuity and referencing an enclosed benefit summary dated August 26, 2010; (ii) the August 26, 2010 benefit summary; and (iii) a November 15, 2015 letter from Jackson to Petitioner and Agent indicating that the letter was provided in response to Agent's request for information concerning the annuity and stating as follows:

This contract was issued on August 26, 2010, with a Single Life and 10-Year Period Certain Option. Monthly payments in the amount of \$1,041.96 began on September 26, 2010. The final guaranteed payment is scheduled to occur on August 26, 2020. At the end of the guaranteed period, the contract will begin paying out under the Life Option, and you will continue to receive monthly payment of \$1,041.96 each for your lifetime.

(Exhibit E).

8. In a December 2, 2015 memo, the Trust and Annuities Unit stated that it appeared that Petitioner could not make partial withdrawals from the annuity or surrender the annuity and concluded that the annuity was the transfer of assets for less than fair market value and resulted in a divestment of the full purchase price because (i) the annuity was not actuarially sound and (ii) it did not name the State as a remainder beneficiary. (Exhibit D.)
9. On December 17, 2015, the Department issued a Health Care Coverage Determination Notice notifying Petitioner that she was eligible for MA effective November 1, 2015 with a \$1143 monthly patient pay amount but that Medicaid would not pay LTC benefits for 13 months and 27 days (from November 1, 2015

through December 27, 2016) because she transferred assets or income for less than their fair market value (Exhibits F and G).

10. On January 28, 2016, the Department received Agent's written hearing request, disputing the Department's actions (Exhibit A).

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and 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 Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In the December 7, 2015 Health Care Coverage Determination Notice, the Department approved Petitioner's application for MA benefits subject to a monthly patient pay amount but concluded that she was not eligible for LTC benefits from November 1, 2015 through December 27, 2016 because she transferred assets or income for less than fair market value. In the "comments from your specialist" section of the notice, the worker advised Petitioner that the penalty period was due to the annuity purchased on August 27, 2010 which was not actuarially sound and did not meet the requirements in BEM 401, p. 4.

At issue in this case is Petitioner's annuity ending 5900 with Jackson. A non-employer-sponsored annuity is a written contract with a commercial insurance company establishing a right to receive specified, periodic payments for life or for a term of years. BEM 400 (October 2015), p. 25; BEM 401 (July 2015), p. 5. An annuity can be a countable asset if it is revocable. See BEM 401, pp. 4, 11. If the annuity is not revocable, the payments an individual receives from the annuity are unearned income unless the annuity results in a divestment of assets. BEM 503 (October 2015), p. 4; BEM 401, p. 5.

In this case, the Department's Trust and Annuities Unit concluded that, based on the annuity documentation provided by Petitioner's nieces, Petitioner could not make partial withdrawals from the annuity or surrender it (Exhibit D). At the hearing, Petitioner's nieces testified that the annuity was in fact surrendered in March 2016, after Agent

received the December 17, 2015 Health Care Coverage Determination Notice denying the application. Agent provided a March 8, 2016 letter from Jackson showing that the annuity ending 5900 was terminated as of March 1, 2016 and the accumulated value of [REDACTED] was paid out to Petitioner (Exhibit 1).

In this case, in reviewing the documentation concerning Petitioner's annuity, the Trust and Annuities Unit concluded that "it appears" that Petitioner could not make any partial withdrawals from the annuity or surrender it. While none of the documentation reviewed by the Trust & Annuities Unit indicated that the annuity could be surrendered, the evidence at the hearing established that the annuity was in fact surrendered and a cash value obtained. Therefore, the Unit erred when it concluded that the annuity could not be surrendered. This error affected the evaluation of the annuity as a divestment rather than a accountable asset. In light of the fact that the annuity could be surrendered, the Department did not act in accordance with Department policy when it concluded that the annuity was a divestment and applied a divestment penalty.

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 did not in accordance with Department policy when it applied a divestment penalty to Petitioner's MA/LTC case.

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. Remove the divestment penalty applied to Petitioner's receipt of LTC benefits for the period November 1, 2015 through December 27, 2016;

2. Reregister and reprocess Petitioner's November 2, 2015 application for MA and LTC eligibility; and
3. Notify Petitioner and Agent in writing of its decision.



ACE/tlf

Alice C. Elkin

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

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