



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS  
DIRECTOR

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

Date Mailed: February 22, 2019  
MAHS Docket No.: 18-013273  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton**

**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; 42 CFR 438.400 to 438.424; 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 January 24, 2019, from Detroit, Michigan. The Petitioner was not present but was represented by [REDACTED], Authorized Hearing Representative (AHR). The Department of Health and Human Services (Department) was represented by [REDACTED] Hearing Facilitator.

**ISSUE**

Did the Department properly determine that Petitioner was subject to a Medical Assistance (MA) divestment penalty period of 17.5 months?

**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 [REDACTED] 2018, Petitioner applied for MA benefits.
2. In January and February 2016, five annuities were issued for Petitioner in the total amount of \$ [REDACTED] (Exhibit A, p. 26)
3. After fraud was identified, four of the five annuities were refunded, and one annuity was issued on or about February 3, 2016 in the amount of \$ [REDACTED] (Exhibit A, p. 13).
4. The guaranteed period was five years with the final payment to be issued on February 3, 2021. (Exhibit A, p. 13).

5. On September 10, 2018, the Department issued a Health Care Coverage Determination Notice which notified Petitioner that she was subject to a divestment penalty period of 17.5 months. (Exhibit A, pp. 39-46).
6. On December 7, 2018, Petitioner's AHR filed a Request for Hearing disputing the Department's actions.

### 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.

Additionally, an annuity is **not** actuarially sound if the annuitant is **not** expected to live until the end of the guarantee period of the annuity. BEM 405 (April 2018), p. 4. In this case, one annuity was initially issued on January 28, 2006 and the remaining four annuities were initially issued between February 21-24, 2006. (Exhibit A, p. 26). However, after fraud was suspected and found, a new annuity was issued on or about February 3, 2016 in the amount of \$ [REDACTED] (Exhibit A, p. 13). The annuity is scheduled to be paid in six payments with the last payment due on February 3, 2021. At the time of application, Petitioner was 96 years old. Under Department policy, Petitioner's life expectancy is 2.64 years. BEM 405, p. 20. As such, the annuity is not actuarially sound.

If the annuity was purchased or amended by, or on behalf of, the applicant or recipient on or after February 8, 2006 the State of Michigan must be named as the remainder beneficiary in the first position, 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 paid on behalf of the institutionalized individual. BEM 401 (May 2018), pp. 5-6). As previously stated, the annuity in question was issued after the February 8, 2006 date and therefore Michigan is required to be listed as a remainder beneficiary. Petitioner's AHR confirmed that she is listed as the sole beneficiary.

The Department testified that because the annuity was not actuarially sound, the entire proceeds were used to calculate the divestment penalty. Department policy provides that the penalty period is computed based on the total uncompensated value of all resources divested, which in this case is the annuity proceeds. Once the total uncompensated value is determined, the Department is to divide that amount by the average monthly private LTC Cost in Michigan, which is based on the client's baseline date. This gives the number of full months for the penalty period. BEM 405, pp. 12-15. Applying Department policy to Petitioner's case, based on a \$ [REDACTED] total uncompensated value of the divested resources and an \$8,261.00 average monthly private LTC cost in Michigan applicable to Petitioner's August 21, 2018 baseline date, the divestment penalty is 17.5 months. Therefore, upon review, the Department properly applied a divestment penalty from August 21, 2018 through February 5, 2020.

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 Petitioner is subject to a divestment penalty period.

**DECISION AND ORDER**

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

JAM/tlf

  
\_\_\_\_\_  
**Jacquelyn A. McClinton**  
Administrative Law Judge  
for Robert Gordon, 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) 763-0155; 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

**Via Email:**

MDHHS-Kalamazoo-Hearings  
BSC3 Hearing Decisions  
EQAD  
[REDACTED]  
MAHS

**Petitioner – Via USPS**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]4

**Authorized Hearing Rep. - USPS**

[REDACTED]  
[REDACTED]  
[REDACTED]