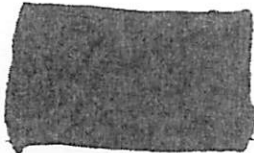




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MED-30/107080

PRELIMINARY RECITALS

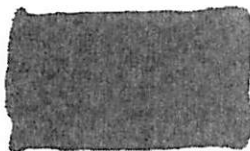
Pursuant to a petition filed September 28, 2009, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on November 19, 2009, at Kenosha, Wisconsin.

The issue for determination is whether the agency correctly discontinued Petitioner's Medicaid because of assets in excess of Medicaid asset limits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Represented By:

Atty. Timothy P. Crawford
Crawford, Crawford & Stutt
840 Lake Ave # 200
Racine, WI 53403-1566

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Lauren Fox & Karen Mayer, ESS
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner  is a resident of Kenosha County.

2. Petitioner applied for Medicaid in September 2008. That application was approved. Two annuities purchased by Petitioner were reported at the time and letters were submitted by Petitioner representatives at the time of application which indicated that the annuities could not be sold. Those annuities are: [REDACTED] was purchased on September 29, 2008 for \$8200.00. It calls for 108 payments of \$78.60 to Petitioner. Those payments began in late October, 2008. Annuity [REDACTED] was purchased on September 18, 2008 for \$27,344.00. It calls for 108 payments of \$262.01 to Petitioner. Those payments began in mid October, 2008.
3. Petitioner's case was reviewed in September 2009. At that time the county agency sought valuations of the annuities from a company named JG Wentworth. It was provided with valuations which indicated that the annuity [REDACTED] was valued at \$3300.00 and annuity [REDACTED] at \$11000.00. That company subsequently provided Petitioner's son with a letter indicating that it could not purchase the annuities from Petitioner as she is incompetent.
4. The county agency discontinued Petitioner's Medicaid effective October 1, 2009 because of assets in excess of Medicaid asset limits based on the value of the two annuities. Petitioner did have a checking account with a balance of \$643.56 and a life insurance policy with a cash surrender value of \$483.00 at the time of review.

DISCUSSION

The Medicaid asset limit is \$2000.00. *Medicaid Eligibility Handbook*, §39.4.1. The *MEH* defines annuity:

16.7.4 Annuities

An annuity is a written contract under which, in return for payment of a premium or premiums, an individual will receive a series of payments at regular intervals for a specified time period.

The annuitant is the person entitled to the payments. A purchaser can name himself/herself or another person as the annuitant. The purchaser may also name a beneficiary to receive annuity payments after the annuitant's death.

The question here is whether the two annuities involved are to be considered assets. Both were purchased after 2004. Per the *MEH*:

16.7.4.1.2 Annuities That Cannot Be Surrendered (this subsection effective 03-01-09)

It has been established that a market exists for annuities that cannot be surrendered. Some companies have purchased such annuities. Check the annuity contract to see if it can be sold. If it is capable of being sold, consider it to be an available asset unless the applicant or recipient demonstrates that s/he has made reasonable attempts to obtain a fair market price by offering the annuity for sale to companies active in the annuities market.

If it appears that the annuity cannot be sold, verify this by having the annuity contract reviewed by a company active in the annuities market for an opinion of its value to the company. If the company documents an amount at which it values the annuity, that amount will be considered an available asset.

The annuity will be considered to be an unavailable asset if documentation is provided from the company stating that it places no value on the annuity. Payments from an annuity that is considered to be unavailable must be counted as income. Annuities that are considered to be unavailable must also be evaluated for possible divestment, in accordance with 17.11 Annuities.

Here Petitioner's representatives have submitted documentation that rebuts the suggestion that the annuities can be sold. Though Wentworth placed a value on the annuities it has also indicated that it will not buy them from Petitioner as she is incompetent.

I do note two other issues here that were not addressed by the agency and this decision does not, therefore, involve these issues. First, the divestment evaluation noted at *MEH*, §16.7.4.1.2 and, second, the requirements of *Operations Memo 09-01*, issued January 7, 2009, and found at page 9 of that memo:

Beginning January 1, 2009, all applicants for Medicaid long term care services and all recipients of Medicaid long term care services undergoing an eligibility review are required to disclose information about any annuities purchased on or after January 1, 2009, in which they or their community spouses have an interest.

This requirement also applies to annuities purchased before January 1, 2009, if any action is taken by the individual that changes either the course of payment from the annuity or the treatment of the income or principal of the annuity. These transactions include:

- additions of principal,
- elective withdrawals,
- requests to change the distribution of the annuity,
- elections to annuitize the contract,
- a change in ownership, or
- any other non-routine action not listed below

The following types of changes and events would not subject an annuity purchased prior to January 1, 2009 to treatment under the new policy rules:

- Routine transactions such as notification of an address change, notification of death or divorce of a remainder beneficiary, and other similar circumstances;
- Changes that occur based on terms of the annuities which existed prior to January 1, 2009 and which do not require a decision, election or action to take effect; or
- Changes beyond the control of the individual, such as a change in law, a change in the policy of the issuer, or a change in the terms based on other factors, such as the issuer's economic status.

A separate annuity disclosure form (Annuity Information – Disclosure F-10192) must be completed by applicants for each annuity owned by the applicant or the applicant's community spouse in order to meet the disclosure requirement. This form must also be sent to SSI recipients who are applying for HCBW and MLTC programs. The Disclosure form must be sent to all applicants and recipients who indicate that they have an annuity. A copy of the completed form and any documents verifying the status of the annuity must be scanned into the electronic case file (ECF).

CONCLUSIONS OF LAW

That the two annuities at issue in this case are not to be counted as assets as the available evidence indicates that they cannot be sold.

THEREFORE, it is

ORDERED

That the matter be remanded to the county agency with instructions to reverse the case closure based upon counting the two annuities at issue here as assets. The county agency must do so within 10 days of the date of this order.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

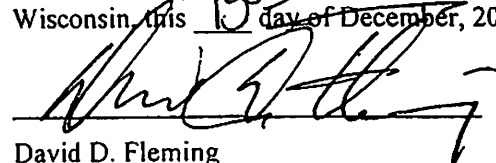
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to Circuit Court, the Respondent in this matter is the Department of Health Services. Appeals must be served on the Office of the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53

THIS IS A CERTIFIED COPY OF THE
DECISIONS AND DECISION MADE IN THIS
CASE AND FILED IN THE DIVISION OF
HEARINGS AND APPEALS IN THE CITY
OF MADISON, WISCONSIN.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15 day of December, 2009



David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

- c: Suzanne Bach, DHS-Bureau Of Health Care Eligibility - email
Margaret Desarmo, Kenosha County Job Center - email
Angela Dombrowicki, DHS/DHCAA Director - email
Vicki Jessup, Department Of Health Services - email
Karen Mayer, Kenosha County DSS - email
Lynn Sabin, DHS - email
-
Samantha Heft, Crawford, Crawford & Stutt - Hard Copy