



STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
LANSING

RICK SNYDER
GOVERNOR

NICK LYON
INTERIM DIRECTOR

March 10, 2015

Amy R. Tripp
Attorney at Law
Chalgian & Tripp Law Offices PLLC
2127 Spring Arbor Road
Jackson, MI 49203

Dear Ms. Tripp:

I was asked to respond to your February 9, 2015, letter to Interim Director Nick Lyon regarding the Michigan Department of Human Services/Michigan Department of Community Health's eligibility policy governing annuities under Michigan's Medicaid program. Both Departments have reviewed the applicable policy language in Bridges Eligibility Manual (BEM) 401 regarding annuities. In light of the U.S. 6th Circuit Court of Appeals decision in *Hughes v McCarthy*, this policy language will be amended accordingly.

Thank you for bringing this matter to our attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Meyer", with a long, sweeping underline.

Mark Meyer, Acting Deputy Director
Michigan Department of Human Services
Office of Legal Services & Policy

Encl.

cc: Nick Lyon
Kurt Krause
Matthew Rick
Jackie Prokop
Mary Schrauben
Joshua Smith
Bill Morris

1019 TROWBRIDGE ROAD
EAST LANSING, MI 48823
PHONE: 517.332.3800
FAX: 517.332.4600

2127 SPRING ARBOR ROAD
JACKSON, MI 49203
PHONE: 517.787.7600
FAX: 517.787.7605

395 S. SHORE DRIVE, STE. 205
BATTLE CREEK, MI 49014
PHONE: 269.963.3900
FAX: 269.963.3901

5820 EASTMAN AVENUE
MIDLAND, MI 48640
PHONE: 989.423.1200
FAX: 989.423.1201

*Kurt
Hansen*

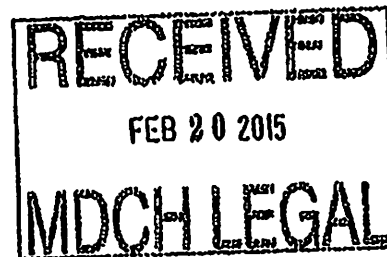


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DOUGLAS G. CHALGIAN
AMY ROMBYER TRIPP
JOHN E. BOS
OF COUNSEL
PHILLIP H. HARTER
OF COUNSEL
DAVID L. SHALTZ
OF COUNSEL
RAMON R. ROLF, JR.
A. MICHELLE LANE
ALSO LICENSED IN OHIO
RACHEL L. ZAPCZYNSKI
JOSEPH D. WEILER, JR.
CHRISTOPHER W. SMITH
ALSO LICENSED IN INDIANA
CHRYSA M. MILHOLLAND
R. DRUMMOND BLACK
DANIEL S. HILKER

February 9, 2015

Nick Lyon, Interim Director
Michigan Department of Human Services
Capitol View Building, Seventh Floor
201 Townsend Street
Lansing, MI 48913



Dear Mr. Lyon:

I am writing to ask that you review the Department of Human Services' interpretation of its eligibility policy governing annuities in Michigan's Medicaid program. Information from the Center for Medicare and Medicaid Services (CMS) and a recent ruling of the 6th Circuit Court of Appeals that is binding law in Michigan suggests that DHS's position that a community spouse of a nursing home resident who purchases an annuity must name the State of Michigan as the primary beneficiary is wrong.

Our Client

Our office represents Helen and William [REDACTED]. Helen is a nursing home resident in Battle Creek. Her husband, William, lives at their home in Marshall. William purchased an annuity. In the annuity contract he is identified as the owner/annuitant. On the annuity beneficiary designation form he inserted the following:

"Primary Contingent Payee(s): STATE OF MICHIGAN EQUAL TO THE AMOUNT OF MEDICAID BENEFITS PAID ON BEHALF OF OWNER/ANNUITANT WILLIAM [REDACTED] UNDER MICHIGAN'S MEDICAID PROGRAM."

Helen [REDACTED] has applied for the Medicaid program to help pay for her nursing home costs.

The Issue

The Calhoun County Department of Human Services asked the DHS Office of Legal Services/ Trusts & Annuities Division to review the annuity. The local DHS eligibility specialist was told that the purchase of the annuity was a transfer for less than fair market value (divestment) because William [REDACTED] did not name the State of Michigan as the beneficiary for an amount equal to the Medicaid benefits paid *on behalf of Helen [REDACTED]*, his spouse.

The DHS policy at issue in this matter is BEM 401. The applicable portions are pages 5 and 18 of that policy. They are highlighted in Attachment 1 to this letter. We attempted to arrange an opportunity to discuss this matter with the DHS Office of Legal Services, but they refused that request.

CMS

Medicaid policy governing annuities was affected by the passage of the Deficit Reduction Act of 2005 (DRA). On July 27, 2006, CMS sent a letter to all the State Medicaid Directors to provide guidance on the implementation of the DRA. A copy of that letter (SMDL #06-018) is Attachment 2 to this letter.

With SMDL #06-018 CMS sent an Enclosure that contains its guidance on Section 6012 of the DRA titled "Changes in Medicaid Annuity Rules Under the Deficit Reduction Act of 2005". That Enclosure is Attachment 3 to this letter. In Part II. B. of that guidance it states:

"Under the DRA an annuity, must name the State as the remainder beneficiary in the first position for the total amount of medical assistance paid on behalf of the annuitant, unless there is a community spouse or a child." (Emphasis).

William [REDACTED] is the annuitant and that is exactly what he did. There is no support in the CMS guidance for the DHS Office of Legal Services' position that the State of Michigan must be named as the remainder beneficiary for the total amount of medical assistance paid on behalf of Helen [REDACTED]. She is not the annuitant.

The 6th Circuit Court of Appeals

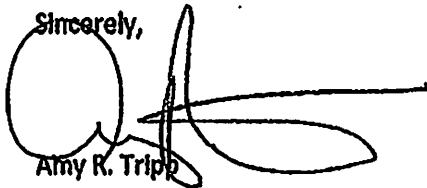
On October 25, 2013 the 6th Circuit Court of Appeals issued its decision in *Hughes v McCarthy*, No. 12-3765. (A copy of that opinion which is binding law in Michigan is available at www.ca6.uscourts.gov/opinions.pdf/13a0308p-06.pdf). That case involved the purchase of an annuity by Mr. Hughes (the community spouse) in which he named Mrs. Hughes (the Medicaid applicant/nursing home spouse) as the first contingent beneficiary with the State of Ohio

Nick Lyon
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named as the remainder beneficiary for the total amount of medical assistance furnished to the annuitant's spouse, Mrs. Hughes. The Ohio agency determined that Mr. Hughes's annuity purchase was an improper transfer because the annuity failed to name Ohio as the first contingent beneficiary and it imposed a divestment penalty period. The Court ruled that no transfer penalty applied because (1) the annuity satisfied the requirements of §1396p(c)(2)(B)(i) of the Social Security Act (the sole-benefit rule) and (2) §1396p(c)(2)(B)(i) is an exception to the overall transfer-penalty regime governing annuities in §1396p(c)(1)(F) on which BEM 401 is based. The annuity purchased by our client, William [REDACTED], satisfies the sole benefit rule spelled out in BEM 405, 9 and 11-12 and likewise should not be subject to a divestment penalty.

We are bringing this matter to your attention in the hope that you will have this information evaluated to determine whether your agency's position is correct. The alternative remedies available for our clients are costly and not conducive to a prompt resolution of this matter. The uncertainty of whether Mrs. [REDACTED]'s nursing home costs will be covered by the Medicaid program is stressful to them and the facility where she resides. Thank you for consideration of this matter. We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy R. Tripp". The signature is stylized with a large, circular initial and a long, horizontal stroke extending to the right.

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