

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Denied in Part; Dismissed in Part.	Appeal Number:	0801478
Decision Date:	6/9/08	Hearing Date:	05/20/2008
Hearing Officer:	Susan Burgess		

Appellant Representative:

MassHealth Representative:
Eileen Smith



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
Two Boylston Street
Boston, MA 02116*

APPEAL DECISION

Appeal Decision:	Denied in Part; Dismissed in Part.	Issue:	Eligibility
Decision Date:	6/9/08	Hearing Date:	05/20/2008
MassHealth Rep.:	Eileen Smith	Appellant Rep.:	Pro se
Hearing Location:	Revere MassHealth Enrollment Center Room 1	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated January 3, 2008, MassHealth determined that the appellant is not eligible for a period of time because the appellant purchased an annuity and will not get her money back during her expected lifetime. (130 CMR 520.018; 130 CMR 520.019; 130 CMR 520.008; Exhibit 1). The appellant filed this appeal in a timely manner on January 30, 2008. (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

On February 5, 2008, the appellant appealed a decision issued on January 7, 2008 regarding an increase in the appellant's patient paid amount. (130 CMR 610.015(B); 130 CMR 520.027; Exhibit 8). The appellant's representative and the MassHealth representative agreed during the hearing that this issue has been resolved. This part of the appeal is dismissed. (130 CMR 610.051(B)).

Action Taken by MassHealth

MassHealth determined that the appellant is not eligible for a period of time because she purchased an annuity and will not get her money back during her expected lifetime.

Issue

Whether MassHealth was correct, pursuant to 130 CMR 520.008(J), in determining that the appellant purchased an annuity and will not get her money back during her expected lifetime.

Summary of Evidence

The MassHealth representative, from the Revere MassHealth Enrollment Center, testified that MassHealth received an application for long-term care benefits on September 10, 2007. The MassHealth representative testified that the appellant went into the nursing facility on November 14, 2006 and requested a start date of September 11, 2007 for MassHealth coverage. The MassHealth representative testified that the appellant was approved with a start date of October 25, 2007. The MassHealth representative testified that this start date is based upon a transfer of assets involving the purchase of an annuity.

The MassHealth representative testified that the appellant purchased an annuity on September 20, 2007. A copy of the annuity is incorporated into the record as Exhibit 5. The MassHealth representative testified that using the life expectancy tables of the Social Security Administration, MassHealth determined that the value of the payments from the annuity is less than the value of the transferred asset or purchase price. The MassHealth representative testified that MassHealth regularly uses the life expectancy tables of the Social Security Administration in determining the value of an annuity. The MassHealth representative testified that the appellant was born on December 24, 1935, making him 71 years old at the time he purchased the annuity.

The MassHealth representative provided a copy of the Social Security Administration's life expectancy tables which shows the life expectancy of a 71-year old male as 12.35 years. (Exhibit 6). The MassHealth representative testified that the appellant purchased an annuity with \$79,000. (Exhibit 5). Utilizing the life expectancy tables from the Social Security Administration, MassHealth determined that the appellant will have a monthly income in the amount of \$455.57, an annual income of \$5,466 and will only receive \$67,515 during a life expectancy of 12.35 years. Therefore, MassHealth determined that the annuity is not actuarially sound. MassHealth determined that there was a disqualifying transfer in the amount of \$11,485 which was the difference between what the appellant would receive in 12.35 years and the purchase price of the annuity. The MassHealth representative testified that MassHealth did review the life-expectancy tables of Aviva and giving them due weight, determined that they are not as sound as those of the Social Security Administration since Aviva utilizes data from 2000 and the Social Security Administration utilizes data from 2003.

The appellant was represented by an attorney who appeared in person. Counsel for the appellant provided a number of documents which are incorporated into the record as Exhibit 7. Counsel for the appellant argued that Aviva, as a standard practice, uses the 2000 Annuity Mortality Table which is still in full force and effect in 2007. (Exhibit 7). Aviva believes that their 2000 Annuity

Mortality Table is likely to best reflect current annuity mortality trends, with a bit of conservatism added. (Exhibit 7). Counsel for the appellant argued that there would be no harm to MassHealth to utilize the tables of Aviva because the remainder of the annuity goes to MassHealth, not the appellant when the appellant passes away. The appellant's attorney argued that Aviva likes to use a longer period of time since the appellant may be able to return to the community and receive income for a longer period of time. The appellant's attorney argued that the harm to the appellant in utilizing tables from the Social Security Administration outweighs the harm to MassHealth. The appellant's attorney argued that the regulations require MassHealth to give due weight to the life expectancy tables utilized by institutions in the business of providing annuities. The appellant's attorney argued that he believes such due weight to be a mathematical analysis, not just a date. The appellant's attorney provided copies of decisions from other hearing officers regarding annuities.

The MassHealth representative responded by testifying that MassHealth did give due weight to the tables and determined that the tables provided by the Social Security Administration are more recent and reliable. The MassHealth representative testified that the tables provided by the Social Security Administration do provide math and the figures they used and MassHealth considered this in giving due weight to the tables utilized by Aviva. However, MassHealth believed that the tables from the Social Security Administration were more up to date and the only company that MassHealth is having issues with regarding annuities is Aviva.

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. The appellant was 71 at the time he applied for MassHealth.
2. The appellant was admitted into a long-term care facility on November 14, 2006.
3. The appellant applied for MassHealth on September 10, 2007.
4. The appellant requested a start date of September 11, 2007.
5. The appellant purchased an annuity on September 20, 2007 in the amount of \$79,000.
6. The appellant has a life-expectancy of 12.35 years utilizing life-expectancy tables of the Social Security Administration which utilizes data from 2003.
7. MassHealth utilizes the life expectancy tables of the Social Security Administration as a regular practice.
8. The appellant will only receive \$67,515 in 12.35 years.
9. MassHealth did give due weight to the life-expectancy tables of Aviva, the company that provided the annuity to the appellant.

10. Aviva gave the appellant a longer life-expectancy utilizing data from 2000.

Analysis and Conclusions of Law

Pursuant to 130 CMR 520.007(J), the purchase of an annuity is a disqualifying transfer of assets for nursing-facility residents as defined at 130 CMR 515.001 in the following situations:

- (a) when the beneficiary is other than the applicant, member, or spouse;
- (b) when the beneficiary is the applicant, member, or spouse and when the total present value of projected payments from the annuity is less than the value of the transferred asset (purchase price). In this case, the MassHealth agency determines the amount of the disqualifying transfer based on the actuarial value of the annuity compared to the beneficiary's life expectancy using the life-expectancy tables as determined by the MassHealth agency, giving due weight to the life-expectancy tables of institutions in the business of providing annuities;
- (c) when the terms of the annuity postpone payment beyond 60 days, the MassHealth agency will treat the annuity as a disqualifying transfer of assets until the payment start date; or
- (d) when the terms of the annuity provide for unequal payments, the MassHealth agency may treat the annuity as a disqualifying transfer of assets. Commercial annuity payments that vary solely as a result of a variable rate of interest are not considered unequal payments under 130 CMR 520.007(J)(1)(d).

These rules apply to annuities established before or after February 8, 2006. The appellant's annuity does not meet these requirements.

As the MassHealth representative testified, MassHealth determined that the value or projected payments from the appellant's annuity is less than the value of the transferred asset (purchase price). As required under the regulations, MassHealth determined the amount of the disqualifying transfer based on the actuarial value of the annuity compared to the appellant's life expectancy using life expectancy tables determined by MassHealth, giving due weight to the life-expectancy tables of institutions in the business of providing annuities. (130 CMR 520.007(J)(1)(b)).

MassHealth did give weight to the tables utilized by Aviva in this case. However, MassHealth determined that the life expectancy table of the Social Security Administration utilizes data from 2003 versus the data from Aviva which is from 2000. Therefore, MassHealth determined that the tables from the Social Security Administration are more up to date and sound. I agree with the decision made by MassHealth. The regulations do give the agency some discretion which was utilized in a sound and responsible manner. The decision made by MassHealth is correct.

The appellant provided copies of decisions issued by other hearing officers which approved annuities utilizing the Aviva life-expectancy tables. However, those cases can be distinguished

from this one because none of them mention what specific tables MassHealth utilized in determining the appellant's life-expectancy and some even refer to tables utilized by MassHealth that contain data that is not as recent as the Aviva tables. Additionally, these decisions are not controlling law. Therefore, although all of the appellant's arguments were considered, the decision made by MassHealth is correct.

This appeal is denied.

Order for MassHealth

None.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Susan Burgess
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Mr. Paul Alford