

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2016 IL App (4th) 150838-U

NO. 4-15-0838

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

November 3, 2016

Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

SAMMY CHARLES MAHANNAH, Executor of the	)	Appeal from
Estate of Edith Catherine Mahannah,	)	Circuit Court of
Deceased,	)	Moultrie County
Plaintiff-Appellant,	)	No. 13MR29
v.	)	
THE STATE OF ILLINOIS, Acting Through The	)	
Illinois Department of Human Services; MICHELLE	)	
R.B. SADDLER, Its Secretary; THE ILLINOIS	)	
DEPARTMENT OF HEALTHCARE AND FAMILY	)	
SERVICES, and JULIE HAMOS, Its Director,	)	Honorable
Defendants-Appellees.	)	Dan L. Flannell,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.  
Justices Holder White and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* A single premium life insurance policy purchased by a medical assistance recipient was a nonallowable transfer of assets for less than fair market value and subject to a penalty period.

¶ 2 Plaintiff, Sammy Charles Mahannah, executor of the estate of his deceased mother, Edith Catherine Mahannah, appeals the circuit court’s judgment affirming the administrative decision of defendant, the Illinois Department of Human Services (Department). The Department awarded Edith benefits subject to a penalty period of 33 months because her purchase of a single-premium life insurance policy was considered a nonallowable transfer of assets. Sammy appealed to the circuit court, arguing the Department erred in implementing the penalty because the purchase was for fair market value. We affirm.

¶ 3

## I. BACKGROUND

¶ 4 In October 2011, Sammy filed an application for medical assistance under the Medicaid program on behalf of Edith, who had been residing in a long-term care nursing facility since April 2011 at a private-pay cost of \$4,995 per month. When considering the application, the Department analyzed any purchases, sales, or transfers of Edith's assets during the relevant timeframe known as the "look-back period" (36 months). The Department discovered that two weeks prior to her application, Edith had purchased a single-premium whole life insurance policy for approximately \$164,000, with a death benefit to Sammy, the primary beneficiary, in the amount of \$1,474 per month for 10 years. Edith had also gifted Sammy \$4,900 in cash. The Department determined these two transactions were non-allowable transfers of assets. In particular, the Department determined Edith's purchase of the life insurance policy was considered a nonallowable transfer because she had not received fair market value for the purchase. As a result, the Department imposed a penalty period of 33 months, from October 2011 until June 2014, during which benefits would not be available to her. Sammy appealed the decision through the administrative channels, but at each level, including after an administrative hearing, the decision was affirmed.

¶ 5 Sammy filed a complaint for administrative review with the Moultrie County circuit court, seeking review of the Department's decision regarding the purchase of the single-premium life insurance policy. The court affirmed the Department's decision.

¶ 6 This appeal followed.

¶ 7

## II. ANALYSIS

¶ 8 Sammy contends the law on "how to calculate fair market value of life insurance" supports a decision in his favor, contrary to the decisions made during the administrative review

processes thus far. He claims the “decision on review is plainly an arbitrary, capricious, and unsupported decision to characterize the insurance policy as something other than [what] it is as a matter of law, and, apparently to subjectively impose an interpretation that cannot be sustained under time-honored contract law.” In other words, Sammy claims the issue on appeal is whether Edith’s purchase of the insurance policy was a purchase for fair market value. The Department contends the issue on appeal is whether it properly imposed a penalty period based upon Edith’s purchase, since it was Sammy, not Edith, who received fair market value for her \$164,000 purchase.

¶ 9 In an administrative review appeal, this court reviews the decision of the agency, not the decision of the circuit court. *Gruwell v. Department of Financial & Professional Regulation*, 406 Ill. App. 3d 283, 288 (2010). Here, the facts are not in dispute. In such a case, this court reviews the agency’s interpretation of the law as applied to the facts. However, the agency’s decision on a question of law is not binding on the reviewing court. *Van Dyke v. White*, 2016 IL App (4th) 131109, ¶ 19.

“ ‘Mixed questions of fact and law are “questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated.” [Citation.]’ [Citation.] A decision on a mixed question of law and fact will not be reversed on appeal unless it is clearly erroneous. [Citation.] ‘A decision is “clearly erroneous” when the reviewing court is left with the definite and firm conviction that a mistake has been committed. [Citations.]’ [Citation.]” *Van Dyke*, 2016 IL App (4th) 141109, ¶ 19 (quoting *American Federation of State, County & Municipal Employees*,

*Council 31 v. Illinois State Labor Relations Board*, 216 Ill. 2d 569, 577-78 (2005)).

¶ 10 As we see it, the sole issue presented in this appeal is whether Edith’s \$164,000 purchase of the single-premium life insurance policy, which, upon Edith’s death, pays Sammy a monthly benefit over the course of 10 years, was an allowable transfer of Edith’s assets pursuant to Title XIX of the Social Security Act, commonly known as the Medicaid Act (42 U.S.C. § 1396 *et seq.* (2006)). To answer that question, we accept the undisputed facts and apply the law, which creates for review a mixed question of law and fact. Therefore, we apply the “clearly erroneous” standard of review. *Van Dyke*, 2016 IL App (4th) 141109, ¶ 19.

¶ 11 Congress enacted the Medicaid Act to help the indigent obtain health care. See *Gillmore v. Illinois Department of Human Services*, 218 Ill. 2d 302, 304-05 (2006). The statute created a cooperative program in which the federal government reimburses the state for a portion of the state’s expenditures in providing this medical assistance. *Gillmore*, 218 Ill. 2d at 304-05. To qualify for medical assistance, in cases such as Edith’s, the applicant must have insufficient income and resources to pay for her own medical expenses. *Gillmore*, 218 Ill. 2d at 305. “Individuals are expected to deplete their own resources before obtaining assistance from the government. The unfortunate reality is that some individuals with significant resources devise strategies to appear impoverished in order to qualify for Medicaid benefits.” *Lebow v. Commissioner of Division of the Medical Assistance*, 740 N.E.2d 978, 980 (2001).

¶ 12 Edith’s purchase of the single-premium life insurance policy is substantially similar to an annuity, the financial vehicle discussed in *Gillmore*. As the supreme court stated, “[a]n annuity is a contract in which a person pays a bank or an insurance company a lump sum in return for fixed periodic payments. If the person dies during the term of the annuity, the

remainder is typically converted into a lump sum and paid to a designated beneficiary.” *Gillmore*, 218 Ill. 2d at 307. If a purchase is not “actuarially sound,” meaning the expected return is not commensurate with a reasonable estimate of life expectancy, the purchase is considered a transfer of assets for less than fair market value and the amount of the purchase is subject to a penalty. *Gillmore*, 218 Ill. 2d at 305 (citing State Medicaid Manual, Health Care Financing Administration Pub. No. 45-3, Transmittal 64, § 3258.9(B) (November 1994)). Here, Edith’s life insurance purchase cannot be described as “actuarially sound” since the benefit is not paid until her death.

¶ 13 In Illinois, Medicaid recipients must not transfer assets for less than fair market value. See 305 ILCS 5/5-2.1(a) (West 2010). The intent of this statute is to prevent affluent individuals from using planning devices or techniques, such as trusts or annuities, to divert their assets while preserving them for their heirs, yet appearing eligible for public assistance. *Gillmore*, 218 Ill. 2d at 308-09; see also *Lebow*, 740 N.E.2d at 980. That is precisely how the single-premium life insurance policy at issue here can be described.

¶ 14 Sammy contends Edith’s purchase of the life insurance policy was on the open market, was an arm’s length transaction, and therefore, by definition, was a fair market value purchase. These, indeed, are characteristics of Edith’s purchase; however, the inquiry cannot end there. Instead, the purchase must be examined for its purpose. As this court has previously explained, “[a] purchase for fair-market value indicates to the Medicaid caseworker that the purpose for the annuity was for retirement planning and not for sheltering assets. A reliable manner to determine that purpose is to evaluate the terms of the annuity.” *Gillmore v. Department of Human Services*, 354 Ill. App. 3d 497, 503 (2004). The apparent purpose of Edith’s purchase of the single-premium life insurance policy was to shelter assets from Medicaid

