



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Director

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

G.S.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MERCER COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 1838-2018

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the contents of the OAL case file. Petitioner filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to file a Final Decision is March 18, 2019 in accordance with an Order of Extension.

This matter concerns the denial of Petitioner's Medicaid benefits due to excess resources. Petitioner and his wife sought to protect excess resources in the form of a Croatian Fraternal Union of America Annuity that is designed for Medicaid purposes. At the time Petitioner entered the nursing home in April 2017, the couple had \$330,963.84 in countable resources. J-1. His total monthly income was \$4,909. The record is silent on

whether if his opened and funded a Qualified Income Trust. Petitioner's wife was able to retain \$122,900 as her Community Spouse Resource Allowance (CSRA). N.J.A.C. 10:71-4.8(a)(1); 42 U.S.C.A. § 1396r-5(f)(2). In general, the CSRA is one half of the couple's resources up to the CSRA limit and is indexed annually. N.J.A.C. 10:71-4.8(a)(1); 42 U.S.C.A. § 1396r-5(c) and (f). Ordinarily, the couple would spend down assets to reach the CSRA. However, Petitioner's wife used \$204,000 to purchase a single premium annuity that would pay her \$68,008.51 a month for three months. ID at 5. Petitioner died in August 2017.

Mercer County denied the application in January 2018 due to excess resources. It was determined that the annuity was revocable and could be cancelled under its express terms and conditions until "midnight of the tenth day from the date of its receipt". J-3. The contract was sent by letter dated July 14, 2017 and Petitioner's wife testified she received in on July 26, 2017. As such the annuity's purchase price of \$204,000 could be returned through August 5, 2017. It is not until September 1, 2017 or the month after Petitioner died, that the annuity could be considered irrevocable. By that time, Petitioner's wife had received \$68,008.51 from that annuity in the month of July and that amount would be counted as a resource to the couple in August. When combined with remaining assets, Petitioner and his wife's assets exceeded the \$122,900 that she was permitted to retain.

The Initial Decision upholds the denial and I concur. As I noted in H.M. v. Division of Medical Assistance & Health Services, HMA 10869-14, (March 10, 2017), "the use of the funds to purchase an annuity creates a new resource that is available until the statutorily mandated time renders the annuity irrevocable." The annuity contract purchased by Petitioner's wife had the hallmarks of a Medicaid annuity used to shield excess resources but the annuity did not become irrevocable until after August 1, 2018. Petitioner's death that month as well as the receipt of \$68,008.51 from the annuity precluded him from obtaining Medicaid benefits prior to his death.

The exceptions filed by Petitioner argue that the Initial Decision found Petitioner's annuity was a "trust-like device".¹ However, Petitioner fails to point out where that is located as the Initial Decision makes no such finding. Nor does the requirement that a consumer be able to cancel an annuity contract violate federal law nor is it a state policy initiative. Rather this 10 day cancellation period exists to protect consumers in many if not all states. See <https://www.sec.gov/fast-answers/answersfreelookhtm.html>. The National Association of Insurance Commissioners (NAIC) has recommended the cancellation period in its model regulations on annuity disclosure since the late 1990's, well before the federal Medicaid law on annuities was passed. <https://www.naic.org/store/free/MDL-245.pdf>. The stated purpose of the disclosure rules is "to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. The regulation specifies the minimum information which must be disclosed, the method for disclosing it and the use and content of illustrations, if used, in connection with the sale of annuity contracts. The goal of this regulation is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts." Ibid.

Additionally, the New Jersey Department of Banking and Insurance issues notices informing consumers about their rights when purchasing an annuity. See <http://www.state.nj.us/dobi/pressreleases/pr170405.html> and <http://www.state.nj.us/dobi/pressreleases/pr140410.html>. All annuity contracts in New Jersey are required to include "provisions or has attached to it a notice stating that during a period of not less than 10 days after the date the initial owner receives the annuity, the owner may cancel the annuity and receive from the insurer a prompt refund of any account value of the annuity, including any contract fees or other charges, by mailing or otherwise surrendering the annuity together with a written request for cancellation." N.J.S.A. 17B:25-39. The statute also

¹ Petitioner's exceptions also states that the denial notice failed to comply with federal and state requirements, however, there is no argument in support of this in the exceptions.


requires a "buyer's guide regarding annuities, which may be substantially similar to any annuities buyer's guide prepared by the National Association of Insurance Commissioners, or its successor, and shall include, but not be limited to, a description of various kinds of annuities, standard features of annuities, including the 10-day cancellation period for consumers required by section 6 of this act and any other consumer cancellation period required by law, and information concerning the negotiation and sale of annuities." N.J.S.A. 17B:25-37(b). Additionally, sellers of annuities must also "make reasonable efforts to obtain and record information about the suitability of the product for the solicited consumer and the consumer's acknowledgement of the information recorded." http://www.state.nj.us/dobi/bulletins/blt09_12.pdf. These rules apply to annuities regardless if they are being purchased to dispose of excess resources for Medicaid purposes and the annuity purchased by Petitioner's wife contained this provision. Despite this language appearing in the contract pursuant to N.J.S.A. 17B:25-39 and the requirement that Petitioner's wife received a buyer's guide that describes the 10 day period, Petitioner's wife testified that she had not "looked at the language" of the contract nor was she told this by anyone involved in the process. ID at 6. This, however, does not change the fact that the annuity was revocable and available to the couple.

Based on my review of the record, I concur with the ALJ's findings and hereby ADOPT the Initial Decision.

THEREFORE, it is on this 4th day of FEBRUARY,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Meghan Davey, Director
Division of Medical Assistance
and Health Services