

The matter arises regarding the determination that Petitioner was subject to a transfer penalty. Ocean County found that Petitioner had purchased an annuity in April of 2015 for \$40,000. He applied for benefits in April 2018 so the annuity was purchased in the five-year look-back period. The annuity does not meet the conditions found in 42 U.S.C.A § 1396p(c) (1) (G) as it is not actuarially sound so as to pay back within Petitioner's expected life time and there is a provision for a lump sum withdrawal as well as deferred payments. As such Ocean County imposed a penalty for the purchase price of the annuity. Petitioner was found otherwise eligible as of April 1, 2018 and subject to a penalty of 94 days. He died on April 26, 2018.

The Initial Decision upholds the transfer penalty as Petitioner's annuity does not comply with federal requirements for the purchase of an annuity to escape the imposition of a transfer penalty. The purchase of an annuity is deemed a transfer for less than fair market value when certain conditions are not met. The terms of the annuity did not provide that the purchase price would be returned to Petitioner within his actuarial life expectancy. The annuity was to pay for Petitioner's lifetime and then to his daughter as beneficiary for the amount remaining up to the premium payment. The annuity also permitted Petitioner to take a lump sum payout from the annuity which fails the requirement that payments be made in equal amounts and is akin to a balloon payment. See U.S.C.A § 1396p(c) (1) (G) (ii)(II) and (III).


The Initial Decision also notes that if the proceeds from the annuity were used for Petitioner's benefits, the penalty could be reduced. However, this is incorrect. There are only three instances where a reduction of the transfer penalty is permitted and the use of some of the funds on Petitioner's behalf is not one of the enumerated instances. Rather any reduction of the transferred funds is predicated on whether "[a] satisfactory showing is made to the state (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable

consideration, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual." 42 U.S.C. § 1396p(c)(2)(C) (emphasis added). Therefore, partial returns are not permitted to modify the penalty period and, absent a return of all the assets, the penalty continues uninterrupted. See C.W. v. DMAHS and Union County Division of Social Services, A- 2352-13T2, decided August 31, 2015, (finding that arguments for the partial reduction of a ten year, four month and thirteen day penalty "lacked any legal support"). Therefore, the penalty was correctly applied.

THEREFORE, it is on this 18th day of APRIL 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services