



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 07028-25

AGENCY DKT. NO. N/A

M.M.,

Petitioner,

v.

**CAMDEN COUNTY BOARD OF SOCIAL
SERVICES,**

Respondent.

Matthew Bravette, Esq., for petitioner (Bratton Law Group, attorneys)

Botonya Y. Harris, Human Support Specialist, for respondent under N.J.A.C.
1:1-5.4(a)(3)

Record Closed: November 24, 2025

Decided: January 26, 2026

BEFORE **KIMBERLEY M. WILSON**, ALJ:

STATEMENT OF THE CASE

Petitioner M.M. appeals a decision from respondent Camden County Board of Social Services (Agency) denying her January 31, 2024, application for NJ FamilyCare Medicaid benefits under the Medicaid Managed Long-Term Services and Supports (MLTSS) program because her resources exceeded the maximum allowable limit. The

question is whether a single premium annuity issued in December 2023 was revocable under N.J.S.A. 17B:25-39 and, therefore, available to M.M.'s community spouse as a resource. I conclude that the annuity was irrevocable and not available as a resource for MLTSS Medicaid eligibility purposes.

PROCEDURAL HISTORY

On or around January 31, 2024, M.M., through a designated authorized representative (DAR), submitted an application for NJ FamilyCare/Medicaid benefits (Application) to the Agency. (P-1.) On or around April 3, 2025, the Agency sent a letter to M.M., through the DAR, indicating that a prior denial letter was rescinded and on a re-evaluation of the Application, it was denied for excess resources. (R-5.) On or around April 7, 2025, M.M. requested a fair hearing.

The New Jersey Division of Medical Assistance and Health Services (DMAHS) transmitted the matter to the Office of Administrative Law, where it was filed as a contested case on April 28, 2025. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Status conferences were held on July 10, 2025, and September 22, 2025. The hearing took place on October 30, 2025, and the record remained open to allow petitioner's counsel to provide a list of authorities, which was received. The record closed on November 24, 2025.

Pursuant to Orders of Extension entered on December 11, 2025, and January 6, 2026, the Initial Decision due date was extended to January 26, 2026.

DISCUSSION AND FINDINGS OF FACT

On or around January 31, 2024, M.M. submitted the Application. (P-1.) In the Application, M.M. noted that she needed long-term services and supports and that her spouse did not live with her. (P-1 at 2-3.) M.M. was admitted to a nursing home facility on March 21, 2023. (R-1 at 13.)

When the Agency began determining M.M.'s eligibility for MLTSS Medicaid benefits, a representative created a spousal split document, listing all the marital assets. (R-2 at 12.) The total marital assets, or countable resources, as of March 1, 2023—the month M.M. began living at a nursing home—were \$194,051.28. (Ibid.) According to Botonya Harris, a human support specialist for the Agency, the Agency had to consider M.M.'s resources for the month prior to her admission to the nursing home facility. The Agency determined that M.M.'s combined assets with her husband could not exceed \$99,025.64. (Id. at 13.)

On or around December 28, 2023, M.M.'s spouse received a single-premium annuity that he purchased that was issued by Unity Financial and Annuity (annuity). (R-3.) The amount of the annuity was \$41,250, and the annuity was effective on December 27, 2023. (R-3 at 17.) The annuity provides that it is irrevocable, providing the following:

This Contract is irrevocable. It may not be transferred, assigned, surrendered or commuted during Your lifetime. This Contract has no cash value or loan value. Neither the Annuitant nor any Beneficiary, Owner or Payee may be changed.

[R-3 at 18.]

The entire contract includes the application, amendments, and any endorsements. (Ibid.) The annuity included an immediate irrevocable election form that M.M.'s spouse signed on or around December 21, 2023. (Id. at 20.)

An Agency caseworker prepared an asset summary sheet for all of M.M.'s assets. Because M.M.'s Application was made in January, the Agency had to determine whether, as of January 1, 2024, M.M. had completed the necessary spenddown to qualify for MLTSS Medicaid benefits. The Agency determined that M.M. had not completed the necessary spenddown because the annuity was purchased during a State-mandated ten-day period that allows all annuities to be revoked. On January 1, 2024, the annuity was subject to being revoked based on State law, and the Agency determined that the annuity was still a countable asset, making M.M.'s total assets \$128,329.30 as of January 1, 2024. (R-4.)

On or around April 3, 2025, the Agency sent a letter to M.M., through the DAR, indicating that a prior denial letter had been rescinded and that on a re-evaluation of the application, it was denied for excess resources. (R-5.)

Jay Hardy, president and chief executive officer of Unity Financial Life Insurance Company (Unity), testified that the State of New Jersey's Department of Banking and Insurance (NJDOBI) approved Unity's form annuity contract with an immediate irrevocable election form on or around January 10, 2019. (P-12.) This form assists individuals who are applying for Medicaid benefits because, to the extent that an individual has the right to revoke an annuity, the period allowing the individual to revoke the annuity lengthens the time that the individual is eligible for Medicaid benefits. (*Id.* at 063.) According to Hardy, once Unity provides a New Jersey customer with written notification of New Jersey's thirty-day statutory right to revoke an annuity, Unity can then provide the customer with the immediate irrevocable election form.

If a customer made a request for Unity to revoke an annuity he or she purchased that included an executed immediate irrevocable election form, Unity would not be able to revoke the annuity without a valid court order.

DISCUSSION AND CONCLUSIONS OF LAW

Medicaid is a cooperative federal-state venture established by Title XIX of the Social Security Act. 42 U.S.C. § 1396, et seq. It is "designed to provide medical assistance to persons whose income and resources are insufficient to meet the costs of necessary care and services." *Atkins v. Rivera*, 477 U.S. 154, 156 (1986); see also 42 U.S.C. § 1396-1; N.J.S.A. 30:4D-2. The New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 to -19.5, created New Jersey's Medicaid program and the DMAHS to perform administrative and operational functions related to the program. See N.J.S.A. 30:4D-4. Once the State joins the program, it must comply with the Medicaid statute and federal regulations. *Harris v. McRae*, 448 U.S. 297, 301 (1980).

Finally, Medicaid benefits must be provided to individuals whose household income is at or below 133 percent of the federal poverty level based on the family size.

42 C.F.R. § 435.119(b)(5) (2025). For aged, blind, and disabled persons, the income limits are based on 100 percent of the poverty income guidelines. N.J.A.C. 10:72-4.1(a). Aged, blind, or disabled persons must also meet resource criteria to be eligible for Medicaid, and they are not eligible for benefits in any month when their countable resources are more than \$4,000 for an individual. N.J.A.C. 10:72-4.5(b).

Annuities can be a countable asset or resource for Medicaid purposes unless that annuity meets the following criteria:

the annuity—

- (I) is irrevocable and nonassignable;
- (II) is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration); and
- (III) provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.

[42 U.S.C. § 1396p(c)(1)(G)(ii).]

State law, however, provides for a ten-day period during which an individual who has purchased an annuity is permitted to cancel the annuity. N.J.S.A. 17B:25-39. This period is also known as a free-look period.

The sole issue is whether the annuity was a countable resource on January 1, 2024, allowing M.M. to be eligible for MLTSS Medicaid benefits. The Agency determined that, on January 1, 2024, M.M.'s countable resources were \$128,329.30, which was \$29,303.66 more than the \$99,025.64 spousal resource limit the Agency calculated. For the following reasons, the annuity is not a countable resource for MLTSS Medicaid purposes, and as of January 1, 2024, M.M.'s resources did not exceed the statutory maximum.

M.M.'s spouse purchased the annuity for \$41,250, and it was effective on December 27, 2023. The annuity states that it is irrevocable, and M.M. signed an immediate irrevocable election form on or around December 21, 2023. Unity does not allow a customer to revoke an annuity after signing the immediate irrevocable election form without a court order. The NJDOBI approved this form of immediate irrevocable election form on or around January 10, 2019, allowing individuals to waive their right to cancel their annuity product under N.J.S.A. 17B:25-39.

The Commissioner of the NJDOBI has regulatory authority over annuity products, including the annuity. See N.J.S.A. 17:1-15(f); N.J.S.A. 17B:30-1. Importantly, there is no evidence in this record that M.M.'s spouse had access to the funds in the annuity on January 1, 2024. The annuity was not a countable resource for MLTSS Medicaid eligibility. See A.V. v. Cumberland Cnty. Bd. of Soc. Servs., HMA 08571-21 (May 27, 2022), adopted in part, reversed in part, Comm'r (August 19, 2022), <https://njlaw.rutgers.edu/collections/oal/>.

The Agency cites two final agency decisions in support of its argument that the annuity was a countable resource accessible to M.M. Neither of these decisions is persuasive. In J.C. v. DMAHS, HMA 15248-15, Final Decision (April 27, 2017), <https://njlaw.rutgers.edu/collections/oal/>, the Director found that there was insufficient competent evidence to show that the community spouse was unable to revoke an annuity that would have established Medicaid eligibility. Notably, there was no evidence in the record that the applicable annuity company would honor a waiver of the ten-day, free-look period allowing for a cancellation. Here, M.M. has presented sufficient evidence regarding her spouse's inability to access the funds in the annuity.

In G.S. v. DMAHS, HMA 01838-18, Final Decision (February 27, 2019), <https://njlaw.rutgers.edu/collections/oal/>, the Director found that the community spouse's annuity was an asset available to the couple. In the Final Decision, there was no discussion of a waiver of the ten-day, free-look period at all, and no evidence that the community spouse signed a waiver of that ten-day period. The facts in both matters that the Agency cites are distinguishable and, therefore, not persuasive.

For the foregoing reasons, I **CONCLUDE** that the annuity was not a countable resource for MLTSS Medicaid purposes and that M.M.'s resources did not exceed the statutory maximum as of January 1, 2024.

ORDER


I **ORDER** that the annuity was not a countable resource for MLTSS Medicaid purposes and that M.M.'s resources did not exceed the statutory maximum as of January 1, 2024.

I **FILE** this initial decision with the **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**. This recommended decision is deemed adopted as the final agency decision under 42 U.S.C. § 1396a(e)(14)(A) and N.J.S.A. 52:14B-10(f). The **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES** cannot reject or modify this decision.

If you disagree with this decision, you have the right to seek judicial review under New Jersey Court Rule 2:2-3 by the Appellate Division, Superior Court of New Jersey, Richard J. Hughes Complex, PO Box 006, Trenton, New Jersey 08625. A request for judicial review must be made within 45 days from the date you receive this decision. If you have any questions about an appeal to the Appellate Division, you may call (609) 815-2950.

January 26, 2026 _____

DATE



KIMBERLEY M. WILSON, ALJ

Date Received at Agency:

January 26, 2026 _____

Date Sent to Parties:

KW/ml

APPENDIX

Witnesses

For petitioner:

Jay Hardy, President and Chief Executive Officer of Unity Financial Life Insurance Company

For respondent:

Botonya Y. Harris

Exhibits

For petitioner:

- P-1 Application dated January 31, 2024
- P-2 Request for Information from Agency to M.M. dated April 25, 2024
- P-3 Letter from M.M.'s attorneys to the Agency dated May 9, 2024
- P-4 Letter from M.M.'s attorneys to the Agency dated May 23, 2024
- P-5 Letter from the Agency to M.M. dated November 22, 2024
- P-6 Letter from M.M.'s attorneys to the Agency dated December 11, 2024
- P-7 Fair hearing request dated December 31, 2024
- P-8 Letter from the Agency to M.M. dated April 3, 2025
- P-9 Fair hearing request dated April 7, 2025
- P-10 Unity Financial Single Premium Immediate Annuity
- P-11 Checks for annuity purchase
- P-12 NJDOBI approval of Unity Financial annuity contract
- P-13 Case law
- P-14 Letter from Unity addressed to "To Whom it May Concern" regarding immediate irrevocable election form dated September 9, 2025

For respondent:

- R-1 Application dated January 13, 2024
- R-2 Spousal resource assessment
- R-3 Unity Financial Single Premium Immediate Annuity
- R-4 Asset summary sheet
- R-5 Letter from the Agency to M.M.'s attorneys dated April 3, 2025
- R-6 Email correspondence between the Agency and Unity Financial between July 9, 2025, and July 15, 2025
- R-7 Case law