Federal Court says State Cannot Consider Annuity in Medicaid Eligibility

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In a potentially precedent-setting case, a federal court ruled that the Pennsylvania Department of Public Welfare (DPW) cannot include a spouse's $250,000 single premium immediate irrevocable annuity as an asset for the purpose of determining the eligibility of her institutionalized spouse for Medicaid benefits.

On Sept. 20, 2005, Robert James (the institutionalized spouse) filed a resource assessment with the DPW stating that he and his wife's available resources totaled $381,443 as of Aug. 10, 2005. After allowing for the Community Spouse's Resource Allowance (CSRA) and the institutionalized spouse's allowance, James and his wife then had available resources totaling $278,343.

To reduce their assets to qualify Robert for Medicaid benefits, his wife (considered the community spouse), Josephine, purchased a $250,000 annuity from General Electric Assurance Co. on Sept. 12, 2005. The annuity was payable to her over an eight-year period in monthly amounts of $2,937.71, beginning Oct. 1, 2005, and ending Sept. 1, 2013.

In addition, Robert purchased a new automobile for $28,550 two days after purchasing the annuity. At this point, all of Robert's resources over the limit set by the CSRA and the institutionalized spouse's allowance had either been spent or converted to the annuity. Robert then applied for Medicaid coverage to assist with the payment of his nursing facility bill.

However, the DPW determined that Robert was not eligible for Medicaid assistance because he did not receive fair consideration for the resources used to purchase the annuity. According to the DPW, the annuity had a value of $185,000 and that exceeded the CSRA when combined with other resources owned by Josephine. These resources were therefore available to pay for nursing care at a rate of more than $5,000 per month. James can then reapply for assistance once his resources fall within eligibility limits.

The Federal Third Circuit Court of Appeals gave the following ruling on the treatment of annuities under Medicaid:

DPW cannot use a methodology more restrictive than that used by the Supplemental Security Income (SSI) Program

In determining whether the annuity may be treated as a resource, the DPW cannot use a methodology that is more restrictive than that used by the SSI.

A methodology is considered to be less restrictive if, using the methodology, additional individuals may be eligible for medical assistance and no individuals who are otherwise eligible are made ineligible for such assistance.

An irrevocable, non-transferable annuity does not fit the statutory definition of an available resource

Under the SSI regulations, a resource is considered an available resource if an individual has the right, authority or power to liquidate the property, or his or her share of the property. But Josephine James lacks such power to change ownership in her single premium immediate annuity that also states that it "may not be surrendered, transferred, collaterally assigned or returned for a return of the premium paid."

Even if Josephine James has the de facto ability to effect a change in ownership of the annuity, she cannot do so without breaching the contract and incurring legal liability. Accordingly, DPW cannot treat the annuity and any assets as available resources that would not be treated as such under the SSI regulations.

Hypothetical transactions that would create a new annuity from the sale of the existing annuity cannot be used to support the treatment of the existing annuity as an available resource

DPW argued that Josephine James could theoretically create a new annuity by selling the right to an income stream that is equal to the income to which she is entitled from the existing annuity and thus could be treated as

an available resource. The court ruled that the hypothetical proceeds from such a transaction would not be a transfer of the existing annuity but the creation of a new annuity as a currently available resource.

According to the court, there is no statutory basis for such a theory and adopting it would tend to undermine the MCCA rule that “no income of the community spouse shall be deemed available to the institutionalized spouse.”

Under such a theory, there is no clear limit on the hypothetical transaction proceeds that could be treated as assets, whether based on the sale of a future stream of payments tied to a fixed income retirement account, social security, or even a regular paycheck. Therefore it cannot be used to support the treatment of the existing annuity as an available resource.

While the decision in the James case is being considered by some as a gateway for the more flexible use of annuities in Medicaid planning others disagree. For example, legal experts noted that annuities purchased in Pennsylvania after 2005 are considered as available assets because the state made it illegal for annuity sellers to including a clause that makes them non-transferable.

This one case does not determine annuities will be treated for the purpose of for the purpose of determining an individual’s eligibility for Medicaid benefits. Experts say the real legal implications of this ruling will depend on how other courts apply the decision to pending cases involving annuities similar to the James case.

To see the decison:

http://www.ca3.uscourts.gov/opinarch/065092p.pdf
