

**Ohio Department of Job and Family Services
Bureau of State Hearings**

Administrative Appeal Decision

County: Cuyahoga

<u>Appeal Number</u>	<u>Program</u>	<u>Disposition</u>	<u>Compliance</u>
3052337	MED	REV	Not Required

Request Date: 03/25/2016

Mail Date: 04/08/2016

Si necesita la traducción y/o explicación de este documento, por favor llame al Bureau of State Hearings al
866-635-3748.

Summary

Appellant appeals the state hearing decision which overruled an appeal regarding the denial of Medicaid due to the Community Spouse's (CS) annuity not being actuarially sound.

Analysis

The assistance group is Appellant, age 59, who is a nursing facility and has a CS, age 63. An application for Medicaid was made on October 30, 2015. The CS has an annuity, issued June 11, 2015, which purchased for \$95,711.61 and provided for monthly payments of \$630.92. The annuity income option was a 15 year term certain and 5-30 years were offered. Appellant is the beneficiary on the annuity and the State of Ohio Medicaid is the contingent beneficiary. The Agency issued a denial notice on November 3, 2015.

Ohio Admin. Code 5101:1-3-05.3 provides in relevant part:

(B) Definitions.

(1) "Actuarially sound annuity" means a product designed to pay off the entire asset value over the actual or expected annuitant's lifetime.

(C) Eligibility criteria.

(1) For any annuity purchased or annuity transaction completed on or after February 8, 2006, the purchase or transaction shall be treated as the disposal of an asset for less than fair market value as outlined in rule 5160:1-3-07.2 of the Administrative Code unless:

(a) The state of Ohio is named as the remainder beneficiary in the first position for the total amount of medical assistance furnished to the individual; or

(b) The state of Ohio is named as such a beneficiary in the second position for the total amount of medical assistance furnished to the individual after the community spouse or minor or disabled child, and is named in the first position for the total amount of medical assistance furnished to the individual if such spouse or a representative of such child disposes of any such remainder for less than fair market value.

(2) The following annuity purchases are not considered a disposal of an asset for less than fair market value for any annuity purchased on or after February 8, 2006:

(a) An annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986 (as in effect on February 1, 2014); or

(b) An annuity purchased with proceeds from:

(i) An account or trust described in subsection (a), (c), or (p) of section 408 of such code, or

(ii) A simplified employee pension (within the meaning of section 408(k) of such code); or

(iii) A Roth IRA described in section 408A of such code.

(3) For any annuity purchased on or after February 8, 2006, the purchased annuity shall be irrevocable, non-assignable, and actuarially sound as determined by the life expectancy tables published by the office of the actuary of the social security administration in accordance with 26 C.F.R. 20.2031-7, subpart E (as in effect on July 1, 2015), and provides for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made.

(a) For an annuity to be considered actuarially sound, the total amount of proceeds shall be designed to be dispersed in equal monthly payments with no anticipated lump sum payment. The only allowable lump sum payment is the refund provided when the annuitant dies prior to the end of the guaranteed period and paid to the remainder beneficiary.

(b) The purchased annuity shall not have a balloon payment provision unless the balloon payment designation is for the community spouse.

(c) Any annuity not providing fixed, monthly payments shall be treated as a countable resource. Once annuitized, the annuity will be considered an exempt resource.

(d) Any fixed, monthly payment received from the annuity shall be considered as unearned income to the named annuitant.

(D) Individual responsibilities.

(1) The individual applying for or receiving long term care services in a long term care facility, under a HCBS waiver program, or under PACE shall disclose any annuity owned by either the institutionalized individual or community spouse.

(2) The individual applying for or receiving long term care services in a long term care facility, under a HCBS waiver program, or under PACE, or the community spouse shall designate the state of Ohio as the remainder beneficiary for any annuity purchased on or after February 8, 2006, as follows:

(a) The state of Ohio is named as the remainder beneficiary in the first position; or

(b) The state of Ohio is named beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such a child disposes of any such remainder for less than fair market value.

(c) The individual is required to provide verification of the remainder beneficiary designation. Failure to provide verification will result in termination or denial for medical assistance.

(E) Administrative agency responsibilities. The administrative agency shall:

(1) Request from the individual a disclosure of any annuity ownership the individual or community spouse has in an annuity for any annuity purchased on or after February 8, 2006.

(2) Explain as part of the application process or upon discovery, such provisions which require the state of Ohio to become a remainder beneficiary for any annuity purchased on or after February 8, 2006.

(3) Verify the remainder beneficiary designation for any annuity purchased on or after February 8, 2006.

26 CFR 20.2031-7 provides for the valuation of annuities and for a 63 year old male. The valuation according to that regulations provides for a life expectancy of 17.57 years.

The hearing decision states that:

"The Agency stated that since the annuity is for 15 years instead of the Medicaid actuarially sound amount of 17.57 years, then this was in improper transfer. There were other issues, such as getting the five year look back verifications for the resource assessment, but ultimately, the Agency denied the application due to the annuity not being actuarially sound."

The decision also stated that the annuity was valued in all respects except that it was not actuarially sound because it was for 15 years and not the life expectancy of the individual.

Appellant argues that the annuity is actuarially sound because of under the plain language of 5160:1-3-05.3(C)(3)(a) which provides:

(a) For an annuity to be considered actuarially sound, the total amount of proceeds shall be designed to be dispersed in equal monthly payments with no anticipated lump sum payment. The only allowable lump sum payment is the refund provided when the annuitant dies prior to the end of the guaranteed period and paid to the remainder beneficiary.

The hearing decision referred to the preceding paragraph (C)(3) which states:

(3) For any annuity purchased on or after February 8, 2006, the purchased annuity shall be irrevocable, non-assignable, and actuarially sound as determined by the life expectancy tables published by the office of the actuary of the social security administration in accordance with 26 C.F.R. 20.2031-7, subpart E (as in effect on July 1, 2015), and provides for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made.

Our review of the record shows the annuity is dispersed in equal monthly payments with no anticipated lump sum period. It further pays off within the annuitant's life period. Specifically, this is a 15-year annuity and Appellant's life expectancy, per the tables, is 17.57 years. Accordingly, because we must presume the annuity would be paid out within Appellant's lifetime, again, per the tables, we conclude it is actuarially sound. The annuity is, therefore, not considered as the disposal of an asset for less than fair market value. Accordingly, we are reversing the hearing decision based on a misapplication of law or rule per Ohio Admin. Code 5101:6-8-01(C) and (I).

Decision

The state hearing decision is REVERSED and the matter is remanded to the Agency to redetermined eligibility based on this decision.

The agency is directed to send the Appellant written notice of the action taken as a result of this decision via an ODJFS 4074, 4065, 7334, 7401 or other appropriate state form. The agency is to attach a copy of this notice to the ODJFS 4068 State Hearing Compliance form. The Appellant retains all state hearing rights regarding any future agency determination.

David Robertson
Administrative Appeal Officer

Margaret Adams
Concur

Lewis George
Chief Legal Counsel
04/08/2016

Notice to Appellant

This administrative appeal decision is the final decision on this appeal from the Ohio Department of Job and Family Services and/or the Ohio Department of Medicaid. It is binding on the Departments and agency, unless it is reversed or modified on appeal to the court of common pleas.

If you disagree with the decision, you may appeal it to the court of common pleas pursuant to sections 119.12, 5101.35(E), and 5160.31 of the Revised Code. Mail the original notice of appeal to the department at the following address:

Ohio Department of Job and Family Services
Office of Legal and Acquisition Services
30 E. Broad Street, 31st Floor
Columbus, Ohio 43215-3414

You must also file a copy of the notice of appeal with the court of common pleas in the county in which you reside (Franklin County, if you do not reside in Ohio). Your appeal must be filed within thirty (30) days of the date the decision was mailed to you.

Please note: Any additional information received by the Bureau of State Hearings, relating to this matter, shall be returned to the person who sent it.

If you have questions about appealing to a court, contact your attorney, local Legal Aid Society, or bar association. If you don't know how to reach your local Legal Aid office, call 1-866-LAW-OHIO (1-866-529-6446), toll free, or search the Legal Aid directory at <http://www.ohiolegalservices.org/programs>.