A Spousal Immediate Annuity Helps a Family Qualify for Medicaid

A recent federal court case in Connecticut changes the eligibility rules for Medicaid, the joint federalstate program that pays for long-term care. The case is entitled, Lopes v. Starkowski.

John Lopes, age 85, lives in the Riverside Manor Health Care Center in East Hartford,CT. John's wife, Amelia Lopes, lives in their home in the same town. As of February 5, 2010, Amelia had assets in excess of $340,000. John had a Connecticut partnership long-term care policy which paid $71,175 for his care through February, 2010. Assets to the extent of payments made under a Connecticut partnership longterm care insurance policy are disregarded. The Lopeshad to spend down their assets to $180,735 for John to qualify for Medicaid. The Lopes' spend down amount is the sum of the Community Spouse Protected Amount in February, 2010 ($109,560) plus long-term care insurance payments ($71,175). On February 18, 2010, John filed a Medicaid application with the Connecticut Department of Social Services (DSS). On February 19, 2010, Amelia purchased an immediate single premium annuity for $166,220.50 from The Hartford, a life insurance company. Amelia could not change the contract or assign the contract. The annuity contract required immediate payments over Amelia's expected life span; it was not a deferred annuity. DSS demanded that Amelia sell the annuity but she refused. On May 18, 2010, DSS denied their Medicaid application because Amelia failed to cooperate in selling the annuity. If sold, the annuity would put John and Amelia over the asset limit for Medicaid. John and Amelia appealed the DSS decision to federal court.

The Lopes argued that the Connecticut regulation allowing DSS to treat the annuity as an asset defines the term "asset" more broadly than the federal Supplemental Security Income (SSI) program. A state cannot use a methodology for resource eligibility determinations that are more restrictive than the SSI program.

The Lopes also claimed that the Connecticut annuity regulation (UPM §4030.47) violates federal law because it counts the community spouse's income (Amelia's income) from the annuity as an available asset in determining eligibility for Medicaid. Under federal law, during any month in which a Medicaid applicant is in a nursing home, no income of the community spouse is deemed available to the applicant. John and Amelia argued that it would be incongruent with federal law to permit a state to characterize an income stream from an annuity as an asset. Allowing Connecticut to treat an income stream from an annuity as an asset would open the door to states recharacterizing other income sources as assets, such as payments tied to a fixed income account, social security, or even a regular paycheck.

On August 11, 2010, the federal district court of Connecticut ruled in favor John & Amelia Lopes. The Court found that federal law does not prohibit a spouse living in the community from purchasing a carefully structured, irrevocable, unassignable immediate annuity. The Court noted that Congress provided a detailed set of rules governing transactions that it considered suspicious and the purchase of an annuity is not among them. The Court ruled that Connecticut's treatment of spousal immediate annuities as an asset violates federal law.

On September 15, 2010, DSS appealed the case to the US Court of Appeals (2d Circuit). Elder law attorneys, financial advisors and their clients anxiously await the outcome of the State's appeal.

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