

North Dakota Medicaid Program Improperly Limited Use of Annuities

Causes of Action Available under Section 1983 and Supremacy Clause

By Jeavon Ehler

A federal district court in North Dakota ruled in *Geston v. Olson* that a state Medicaid regulation related to annuities is inconsistent with federal Medicaid law. Prior to reaching the underlying merits, the court ruled that the plaintiff had a right to proceed under Section 1983 and the Supremacy Clause.¹

In calculating the countable assets of a nursing home facility resident, the North Dakota Medicaid program considered an annuity purchased by his spouse as an asset. Consistent with federal Medicaid law, the annuity was actuarially sound and listed the Medicaid program as the primary beneficiary in case of the resident's death, but the state Medicaid program nonetheless had valued the annuity at approximately \$380,000 and accordingly found the resident ineligible for Medicaid benefits.

Under federal Medicaid law, if a community spouse receives income in her own name, the income is not considered for purposes of determining the obligations of the nursing facility resident. Thus, in this case, the state regulations were more restrictive than federal law by treating a community spouse's annuity as an available resource rather than income in determining Medicaid eligibility.

The 2005 Deficit Reduction Act placed restrictions on the use of annuities purchased by Medicaid recipients and their spouses in order to limit improper transfers of assets in anticipation of Medicaid eligibility. The Act does not specifically address whether an annuity is considered income or a resource in calculating Medicaid eligibility. However, under the guiding SSI regulations, if an individual has the "right, authority or power to liquidate the property," it will be considered a resource, and "if a property right cannot be liquidated, the property will not be considered a resource."² Since the annuity in question clearly prohibited the community spouse from liquidating it, the annuity could not be treated as an available resource.

¹ *Geston v. Olson*, 2012 WL 1409344, 2012 U.S. Dist. LEXIS 67926 (D. N.D. 2012).

² 20 C.F.R. § 416.1201(a)(1).

Guided by the Section 1983 test developed by the U.S. Supreme Court in *Blessing v. Freestone*,³ the district court determined that while the plaintiff could not proceed under the “reasonable standards” requirement of federal Medicaid law, he had causes of action related to the federal Medicaid requirements that a state use eligibility methodologies no more restrictive than those employed by the SSI program, and that a spouse’s income not be deemed available to a nursing facility resident.⁴

The court also found that the plaintiff alleged a valid Supremacy Clause claim, stating that the clause prohibits states from establishing eligibility rules for federal assistance programs that conflict with federal statutes and rules. Specifically, the plaintiff had alleged that the state annuity regulation conflicted with federal Medicaid law. The court did not mention *Douglas v. Independent Living Center*, the Supreme Court’s examination earlier this year of claims brought under the Supremacy Clause.⁵

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³ 520 U.S. 329 (1997).

⁴ 42 U.S.C. §§ 1396a(a)(17) (reasonable standards), (r)(2)(B) (no more restrictive), 1396r-5(b)(1) (spouse’s income not attributable to resident).

⁵ NSCLC Website, [Douglas v Independent Living Center of Southern California, 2012](#)