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Sent: Friday, October 12, 2012 1:53 PM

To: DSS-DL-EligibilityStaff

Cc: Beaulieu, Claudette J.; Parrella, Brenda M.; Butler, Daniel T.; Hyman, Phyllis E.; Brennan, Kathleen M.; Dearborn, David S.; Voghel, Lee; Gilbert, Michael J.

Subject: Lopes v. Starkowski

Good afternoon –

This email is to inform those of you who process long term care Medicaid application about a recent court decision, Lopes v. Starkowski, that affects our treatment of annuities.

Current annuity policy

Annuity may be regarded as available assets in three ways:

- Individuals who have not elected to receive payments from annuities (deferred annuities) have the right to have the funds used to purchase the annuity refunded to them.

- Even after individuals have elected to receive payments, annuities can be sold as financial commodities, similar to how banks sell mortgages, unless their terms prohibit assignment.

- Finally, the right to receive income from irrevocable, non-assignable annuities represents an available asset to extent that the right to receive payments can be sold on the secondary market to companies such as J.G. Wentworth and Peachtree Financial.

New annuity policy

The Lopes decision pertains to irrevocable, non-assignable annuities and prohibits us from regarding the right to receive income as an available asset. The decision does not affect how we evaluate whether there has been a transfer of assets resulting in a penalty, therefore please continue to check whether all conditions have been met in accordance with UPM 3029.12.

Effective immediately:

- Continue to count deferred annuities (annuities where individuals have not elected to start to receive payments) as available assets.

- Unless their terms prohibit assignment, continue to evaluate annuities in payment status as available assets.

- **Do not regard the right to receive income from irrevocable, non-assignable annuities as available assets. Instead, count the payments as income.**

The above applies to pending applications (including those where Dan Butler previously reviewed the annuity) as well as those that have requested hearings due to denials on this basis. Please continue to send annuity contracts to Dan Butler, who will evaluate and advise you of what needs to be done.

The Lopes decision is an agenda item at the upcoming LTC Ops meeting – more details will follow. In the meantime, please contact Adult Services if you have any questions.

Thank you.

Marc Shok

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