

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES
Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. Ch. 5, §512)

ORDER

Long Term Care Eligibility Process

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care Program. The proposal gives direction on counting annuities and their stream of income for the eligibility process; to clarify that the list of non-liquid resources is not all inclusive; and, to correct an inconsistency in language. The Department’s proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the January 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary Of Proposed Changes

1. To DSSM 20300.2 Non-Liquid Resources:
 - Add the word “annuity” to the list of non-liquid resources; and,
 - Add the words “including but not limited to”.

2. From DSSM 20360 Conditional Medicaid Coverage While Disposing of Resources:
 - Delete the word “securities” from DSSM 20360. There exists an inconsistency in DSSM 20360 which lists “securities” as a non-liquid resource while DSSM 20300.1 lists “stocks” as a liquid resource.

Summary Of Comments Received With Agency Response

The Governor's Advisory Council for Exceptional Citizens (GACEC), the Delaware Developmental Disabilities Council (DDDC), and the State Council for Persons with Disabilities (SCPD) offered the following summarized observations:

We are concerned that not all “securities” can be readily converted to cash in 20 working days. There are bonds, notes, and non-negotiable instruments that may not be convertible within 20 working days. For example, a parent holding a mortgage and note creating a lien on an adult child’s home would not readily find a buyer for the mortgage and note. The same result would occur if a seller of a home provided “owner financing” by holding the mortgage and note on the property. Moreover, stock in a small business which is not publicly traded in which the other stockholders have the right of first purchase may not be convertible within 20 working days.

Therefore, while it may be appropriate for DSS to delete “securities” as an example of non-liquid resource since some securities are easily sold, it would be helpful to add a clarification in the finds section of the final regulation. Specifically, DSS could include the following comment:

While publicly traded securities will generally qualify as liquid resources, other securities may vary widely in liquidity and no absolute characterization of securities as a liquid or non-liquid resource is intended by the amendment to §20360.

We request that DSS consider making decisions on a case by case analysis because there are cases that can’t be liquidated in 20 days. It may be that after due diligence an extension of the time limits would be appropriate for non-liquid resources.

Agency Response: Both liquid and non liquid resources are counted. However, applicants with non liquid resources have the option of signing an “agreement to sell” while attempting to dispose of the resource and may then get conditional Medicaid. The word “securities” was deleted because of a conflict within the Division of Social Services Manual and its vague reference to resources. DSS has corrected this.

Findings Of Fact:

The Department finds that the proposed changes as set forth in the January 2005 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the policies for the Long Term Care Program is adopted and shall be final effective March 10, 2005.

Vincent P. Meconi, Secretary, DHSS, 2/15/05

DSS FINAL ORDER #05-09

REVISIONS:

20300.2 Non-Liquid Resources

Assets that require more than 20 working days to convert to cash are considered non-liquid.

The following types of resources are non-liquid; including but not limited to: annuities and their streams of income, household goods and personal effects, automobiles, trucks, tractors, and other vehicles, machinery and livestock, buildings and land, non-cash business property.

(Break in Continuity of Sections)

20360 Conditional Medicaid Coverage While Disposing of Resources

Effective September 1, 1987 "conditional" Medicaid coverage for nursing home care can be approved for applicants who need Medicaid services while they are disposing of non-liquid resources, e.g., property, ~~securities, etc.~~ There are strict limits on the amount of time allowed for sale of resources and the applicant must sign a statement agreeing to the conditions before an application can be approved. Under conditional eligibility, excess resources are treated as a "conditional exclusion" and are not counted during the conditional benefit period.

However, there is no "conditional exclusion" for spousal impoverishment cases. These resources count because they meet the spousal definition of countable resources. They should be counted in the spousal resource calculation.

8 DE Reg. 1312 (3/1/05)