305.03.06 Consideration of Income from an Annuity

If an annuity is treated as a transfer of assets, the income produced by the annuity counts as income to the individual or spouse, as appropriate, in determining eligibility and post-eligibility cost of care and spousal allocation, as applicable.

The income produced by an annuity that complies with the requirements in this chapter counts as income to the individual or spouse, as appropriate, in determining eligibility and post-eligibility cost of care and spousal allocation, as applicable.

305.03.07 Determining Whether An Annuity is Actuarially Sound

A determination must be made on whether the purchase of annuities, other than qualifying IRS annuities, is treated as a transfer of assets for less than fair market value. If the expected return on the annuity is commensurate with a reasonable estimate of the life expectancy of the beneficiary, the annuity can be deemed actuarially sound.

To make the determination regarding whether the annuity is actuarially sound, use the life expectancy tables located in the Appendix, compiled from information published by the Office of the Actuary of the Social Security Administration. The average number of years of expected life remaining for the individual must coincide with the life of the annuity.

If the individual is not reasonably expected to live longer than the guarantee period of the annuity, the individual will not receive fair market value of the annuity based on the projected return. In this case, the annuity is not actuarially sound and a transfer of assets for less than fair market value has taken place, subjecting the individual to a penalty.

The penalty is assessed based on a transfer of assets for less than fair market value that is considered to have occurred at the time the annuity was purchased, using the full purchase price as the amount transferred.

Determining Whether An Annuity is Actuarially Sound (Continued)

Examples

1. A male at age 65 purchases a $10,000.00 annuity to be paid over the course of 10 years. His life expectancy according to the table in effect at the time is 16.73 years; thus, the annuity is actuarially sound.

2. A male at age 80 purchases a $10,000.00 to be paid over the course of 10 years. His life expectancy (using the table in effect at the time) is only 7.62 years; thus, the annuity is not actuarially sound.

305.03.08 Documentation of Qualifying IRS Annuities

To determine that an annuity is established under any of the various provisions of the Internal Revenue Code that are referenced above, rely on verification from the financial institution, employer or employer association that issued the annuity.

The burden of proof is on the institutionalized individual or his representative to produce documentation. If documentation is not provided, which includes producing a copy of the actual annuity contract (not an application for an annuity or a request form for a change to an existing annuity) in order to evaluate the annuity, the purchase of the annuity will be considered a transfer for less than fair market value which is subject to a penalty. Without documentation, the full purchase value of the annuity will be considered the amount transferred.

305.03.09 Requirements for the Community Spouse

Annuities purchased by the Community Spouse on or after February 8, 2006, must name the Division of Medicaid as the preferred remainder beneficiary. The Institutionalized Spouse may not be named as a beneficiary ahead of DOM. However, if there is a minor or disabled child, the child may be named as first beneficiary and the Division of Medicaid must be named in the next position after those individuals.

It does not matter if the Community Spouse’s annuity is actuarially sound or provides payments in approximately equal amounts with no deferred or balloon payments. These provisions apply only to annuities purchased by or on behalf of the individual who has applied for medical assistance.