



ESTATE PLANNING, PROBATE & ELDER LAW

## FOR IMMEDIATE RELEASE

### **Federal Court of Appeals Upholds District Court Determination that Connecticut's Treatment of Medicaid Compliant Annuities is Unconstitutional**

Decision affects many who have been denied Medicaid coverage

*Newington, CT – October 2, 2012:* A landmark decision was made today that will affect seniors throughout the state of Connecticut who are applying for Medicaid. The Federal Court of Appeals ruled that in the case *Lopes v. Starkowski*, represented by Attorneys Brendan F. Daly and Paul T. Czepiga of CzepigaDaly of Newington, the Connecticut Department of Social Services (DSS) was in violation of federal law when they tried to force a wife to sell her annuity in order for her husband to become eligible for Medicaid.

Mr. Lopes has been confined to a nursing home since November, 2008. The Lopes had \$166,000 more of countable assets than were permitted by Medicaid law. In order to qualify her husband for Medicaid, Mrs. Lopes purchased a non-assignable single premium immediate annuity for \$166,000 in order to provide her with a fixed monthly income. That annuity purchase also reduced the Lopes family's countable assets to less than the \$109,560 that the state of Connecticut allows in order to qualify for Medicaid.

The State of Connecticut contended that Mrs. Lopes should sell the annuity's income stream for a lump sum, even though the annuity was irrevocable and such a sale would have netted only about \$98,000. Essentially the State said the income stream was a saleable asset that would place Mrs. Lopes over the financial Medicaid limit of \$109,560.

In the suit filed in federal district court by Mrs. Lopes' attorneys Brendan Daly and Paul T. Czepiga of CzepigaDaly LLC, Mrs. Lopes contended that federal law exempts her annuity's fixed income in determining her husband's eligibility for Medicaid benefits. In other words, what had been \$166,000 of countable assets was, through the purchase of a immediate payout annuity that complied with federal Medicaid rules, converted to exempt income for Mrs. Lopes' sole benefit.

The federal district court upheld Mrs. Lopes' position and ruled in February 2010 that the purchase by Mrs. Lopes of an immediate payout annuity that prohibited the assignment or alienation of the income stream payable to her, did not violate Medicaid rules and that Mrs. Lopes could not be forced to sell the income stream for a discount on the secondary market. The judge ruled as unconstitutional Connecticut's policy of trying to force a healthy spouse (whose husband or wife is in a nursing home) to sell the income stream produced by the healthy spouse's

annuity. The State of Connecticut appealed the district court opinion to the Second Circuit Federal Court of Appeals in New York.

On October 2, 2012, the federal Court of Appeals resoundingly sided with Mrs. Lopes. According to the Court of Appeals, the language of the annuity made the annuity and its income stream non-assignable—Mrs. Lopes had no legal right to sell the income stream. Furthermore, it was irrelevant that the annuity was purchased just prior to applying for Medicaid benefits. The court was additionally influenced by the views, which it solicited on its own, of the U.S. Department of Health and Human Services, the author of the Medicaid program. HHS urged the Court of Appeals to accept Mrs. Lopes’ position and that of the federal District Court. HHS took the position that Medicaid regulations do not require Mrs. Lopes to renegotiate or breach her annuity contract and that her retention of the annuity payments as her income was consistent with Medicaid’s primary purposes—to provide health care to the indigent and to protect community spouses from impoverishment.

Attorneys Brendan F. Daly and Paul T. Czepiga, two of the elder law attorneys who argued the case on behalf of Mrs. Lopes, noted that the decision affirms the use of annuities to convert assets to much-needed income for many older Connecticut residents who qualify for Medicare.

This case is significant because when one spouse enters a nursing home, the other spouse often has more assets than what the state of Connecticut allows to qualify for Medicaid. Now the healthy spouse is free to purchase an annuity to provide monthly income and still obtain the benefits of Medicaid coverage for the ill spouse. Although not a panacea for all community spouses, the case is a major victory for the firm’s clients.

###

#### **About CzepigaDaly**

CzepigaDaly, voted top attorneys in 2011 by *Super Lawyers* magazine and by *Connecticut Magazine*, is a law firm offering estate and tax planning, elder law and elder law litigation, estate administration, probate and special needs trusts services. Its principals are members of the National Academy of Elder Law Attorneys and have offices in Newington, Wethersfield and Vernon. The firm has a reputation for successfully guiding clients through the complexities of and changes in Medicaid eligibility and asset protection. More information about CzepigaDaly can be found at [www.ctseniorlaw.com](http://www.ctseniorlaw.com).