

—| *Spotlight* |—



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MEDICAID ELIGIBILITY

Eligibility in Michigan continues to evolve

The United States is an aging society. Unfortunately, many people have not saved or planned for their long-term health care needs. In fact, social security benefits are a primary source of family income for eighty-eight percent of individuals aged 65 and over, which is double the number of individuals receiving income from pensions and retirement savings.¹ Regrettably, monthly social security income will not be enough to pay for nursing home care, which can cost as much as \$8,000.00 per month. Furthermore, Medicare does not pay for long-term care in nursing homes. Medicaid benefits are becoming increasingly important for our senior citizen population.

At a time of increasing need for public funded programs, frequent rule changes make determining how to qualify for benefits difficult. In fact, the Michigan Department of Human Services (“DHS”) suddenly reversed its application of policy

pertaining to a “solely for the benefit of” trust (“SBO trust”). For roughly 20 years, a SBO trust has been a common strategy used by elder law attorneys to qualify married couples for Medicaid benefits, while preserving the couple’s assets. This sudden and significant change has left the legal community speculating as to the motivation and rational behind it and has prompted an urgent need to revisit planning strategies with their clients.

It is easier to understand the existing Medicaid rules by use of an example. We will use Joe and Ann, a married senior couple. Joseph worked as a municipal employee for 30 years, never paid into social security, but was able to retire with full pension benefits, including health care for him and his wife, Ann. Joseph then worked an additional 15 years at a job where he did pay into social security. Ann worked in the private sector for nearly 30 years and paid into social security and made several good

investments. This hard working couple was able to save some money and retire with a monthly income of social security and pension of approximately \$5,200.00. For an elderly couple with no mortgage and only grandkids to spoil, this income is certainly adequate and Joseph and Ann will have a little something to pass on to their children. That is, of course, provided Joseph and Ann remain healthy and able bodied until they die.

Planning for Medicaid is not something that Joseph or Ann ever considered. Medicaid is a social welfare program for low-income individuals. They both worked hard all of their adult lives and have earned a comfortable living. However, their retirement savings could be spent quickly on nursing home care.

Over time, Joseph begins to show signs of dementia. Ann decides to care for him at home. Physicians treat Joseph and his care is covered under Medicare and his supplemental insurance, through his former employer. If Ann becomes ill, Joseph will need long-term care in a nursing home. This will cost the couple \$8,000.00 out of pocket per month. This is the point in time when most families seek the advice of elder law attorneys.

A qualified attorney who knows elder care law in Michigan can offer guidance with regard to many important issues affecting a senior citizen’s life, including Medicaid planning, long-term care decisions, and maintenance of an up-to-date long-term care plan and provide asset protection. Being proactive is the best way to plan for long-term care – ahead of time – before you get sick. When you plan in advance, you have more options.

The most commonly used strategy used by elder law attorneys to protect a married couple’s assets when one of the spouses needs nursing home care has been to establish a “solely for the benefit of” trust (“SBO trust”). A SBO trust provides Medicaid eligibility for a married nursing home resident, while preserving assets for his/her spouse. In a nutshell, a SBO trust has been used when one spouse is in the nursing home (nursing home spouse) and the other is still at home (the community spouse). A SBO trust could preserve all assets for the spouse at home, and obtain immediate Medicaid benefits for the spouse in the nursing home.

In Joseph and Ann’s case, let’s say that they have \$200,000 in liquid countable assets and \$100,000 in an IRA. Joseph moves into a nursing home for long-term care and Ann remains home. The Medicare policy provides a maximum protected spousal amount of \$117,240 for Ann, so \$182,760 (\$300,000 – \$117,240 = \$182,760) of Joseph and Ann’s liquid countable assets would be moved to a SBO trust and would be considered unavailable. The \$182,760 is paid out to Ann over her life expectancy and Joseph is eligible for Medicaid.

SBO trusts have been an effective tool used by elder law attorneys since the mid 1990’s to assist couples in preserving assets. On August 20, 2014,

without advance public notice, the Michigan Department of Human Services (“DHS”) changed its interpretation of its policy on SBO trusts and has been denying Medicaid applicants who use SBO trusts for qualification benefits. It is too early to know if DHS’ new interpretation of this policy will have any retroactive fallout for community spouses that currently have SBO trusts. It is clear, however, that meeting with an attorney experienced in Medicaid to explore alternate strategies to preserve assets is crucial.

DHS’ TREATMENT OF A SBO TRUST

Applications that are currently under review with fully funded SBO trusts are expected to be denied. The applicant has the option to withdraw the application and look at other strategies that may be available. The assets that funded the SBO trust will determine what options are available to the applicant. One option may be a Medicaid compliant annuity structured so that the owner is the SBO trust and the annuitant is the community spouse. In the event the assets funding the SBO trust are not liquid, the only reasonable option may be to wait for a denial of the application and file an appeal. Appeals are not the optimal strategy as they are time consuming, expensive and results will be uncertain, especially in these cases that concern pure policy interpretation.

WHERE DO WE GO FROM HERE?

Of course, those who are not in immediate need of long-term care may have the luxury of distributing or protecting their assets in advance, but most people do not plan for these types of benefits. An attorney experienced in elder law is knowledgeable in a variety of strategies that are available to help receive benefits under federal and state programs. There is rarely one option that is perfect for any family situation. Understanding the options available and potential obstacles, the attorney may tailor the best strategy for the particular client.

Although qualification for Medicaid benefits are much more difficult for married couples, without the use of a SBO trust, opportunities still exist to help those in need of long-term nursing home care. With proper planning, the benefits of the Medicaid program can be made available to those facing the hardship of paying for nursing home care. This area of law is undergoing significant changes. An experienced elder law attorney will have the technical tools to assist in this process, from planning and strategy, to implementation and, ultimately, successfully applying for benefits. ■

¹ AARP Public Policy Institute Fact Sheet, 252, March 2012.

For further information on this important issue or to schedule an appointment, please contact Morello Law Group, P.C. at (734) 281-6464 or email george.fekaris@morellolawgroup.com