

“Let our advance worrying become advance thinking and planning” – Sir Winston Churchill

ELDER LAW TODAY

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I just had a client today whose mother HAD a modest estate (say, around \$75,000.00). She entered a nursing home. Her monthly income was around \$ 3,000.00 (from social security and teacher retirement). She has Alzheimer's Disease. They came to me because the nursing home where she had been for the last 5 years as a private pay resident had at last gotten all of her money. With her savings completely depleted by "private paying," the nursing home determined that she would not be eligible for Medicaid because her monthly income exceeded the maximum amount allowed to qualify for Medicaid and told her family she would have to go someplace else. The family took her to another nursing home and this new nursing home referred the family to our office. After interviewing the new client's family I learned that they had on numerous occasions told the administration that they were running out of money and needed help – but the nursing home administrators said "there was nothing that they could do". Not once did they suggest that there was something that could be done: they could have hired our firm to implement a medicaid/asset protection plan. They could have saved about \$40,000.00 of the \$75,000.00 over the 5 years that she was in this first nursing home. And they could have established a "Qualified Income Trust" in order to "pass" the income test. Bottom line, if they had been referred to a qualified attorney who knew the "ins and outs" of Medicaid planning, a significant amount of the woman's assets would have been saved. When they came in today, she only had around \$8,000.00 left. What was the reason why the nursing home never suggested that there was something that could be done to protect a portion (a very significant portion) of her assets? I don't know, but given that they had asked repeatedly if anything could be done, I have to assume that it was the nursing home's "profit motive" –they had to have made a conscious decision NOT TO TELL the resident's family that there was an option that could be used to get the resident on Medicaid. This really saddens me that a facility would not help a family at least explore what options are available when long term care is needed.

So, let's review the very, very basics of Medicaid planning when a single person is needing care in a nursing home. There are 4 tests that must be met: (1) be over 65 or disabled as determined by social

security (2) meet the medical necessity test – basically needing help with what are referred to as "activities of daily living" –help transferring, toileting, bathing, eating, etc. – basically needing that help that an LVN would typically perform (3)pass the income test (a single person's gross income must be below \$2,199.00 per month –but we don't get exercised about it if it exceeds that amount because we can always set up a "Qualified Income Trust" also known as a "Miller Trust"); and (4) pass the "assets test".

A bit of history about the Miller Trust. Years and years ago, Mr. Miller had too much income to qualify for Medicaid –just \$1.00 over the maximum now of \$2,199.00 would have disqualified him, but not enough income to pay for the care in the nursing home. He sued the federal government and HE WON!! As a result, the "Miller Trust" was born. I call it a "smoke and mirrors" trust. The way it works is that the prospective Medicaid recipient establishes a trust whose sole function and purpose is to serve as the recipient of his monthly income (from social security or pension); and then this income is transferred out of the trust each month to the nursing home and "Abracadabra", like magic, he instantly passes the "income test".

Passing the "assets test". The 4th test is typically where we have the greatest challenge. In case of a single person, he or she may only have \$2,000.00 in countable assets in order to qualify for Medicaid. Countable assets are basically everything you can think of except a homestead (which by the way could be a rural homestead) and a vehicle (of unlimited value). It includes the obvious (cash, stocks, mutual funds, other real estate, oil and gas minerals) and perhaps the not so obvious (cash surrender value of life insurance policies and IRAs for example). What happens if the client comes in and has more than the \$2,000.00 in countable assets? We will work with that client to design a plan to accelerate Medicaid eligibility by doing a "spend down". Perhaps they need repairs to their homestead or a new or better car. Maybe they want to buy a prepaid funeral plan (which if irrevocable is exempt). Or maybe they want to make a gift to their minor grandchildren for a college fund (if done right this is a perfectly acceptable way to transfer assets without incurring a transfer penalty). Or, if they want to we can design a plan to protect about 50% of their countable assets which we call a

“half a loaf” plan. I don’t have the space to go into all the details of how we can protect assets – quite often very, very significant assets and that is true even if the client did nothing prior to entering the nursing home. Suffice it to say that in probably 90% of the cases we see, significant things can be done to protect significant assets.

Well, having let off steam over what I consider a travesty by a local nursing home (in failing to let the resident know of her options), I will close for now. Thank God for the wonderful, wonderful rain!!

I hope you enjoy the rest of your summer!!
Dan Campbell



P.S. By the way, when there is a married couple and only one spouse is in the nursing home, we can always protect much more in assets than in case of a single person. I may address the married couple in the Fall newsletter.

Elder Law Today is written by C. Dan Campbell, Attorney at Law, who is Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and Civil Trial Law. **This newsletter is not intended to be nor should it be construed as the giving of legal advice. Before taking any action referred to in this newsletter you should consult with an attorney who is knowledgeable in this area of law.** This newsletter is published as a service of C. Dan Campbell, P.C., 4245 Kemp Blvd., Suite 800, Wichita Falls, Texas 76308. Visit our website at: www.cdancampbell.com

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