

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

ELDER LAW TODAY

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Yesterday, April 26th, we welcomed into “Clan Campbell” Andrew Edgar Campbell, weighing 7.9 lbs and 20 inches long! Our son, Morley and wife, Jessica, are delighted – “baby Ruth” their 2 year old, will have a baby brother to play with (share with?). This makes 4 grandkids for us – ranging from 3 years to 2 days!!! We are blessed beyond measure.

I would like to discuss three topics that are on my mind.

First. This morning a client came into my office. Her husband has been suffering from Parkinson’s Disease for years. They have around \$3000.00 in monthly retirement income. In October 2015 she entered him in a local nursing home which only has 2 “Medicaid beds” –and those are generally never available. Consequently he has had to “private pay” for some 7 months. They have very little in assets – their homestead valued at \$80K has a mortgage of \$68K. Their savings is down to \$32K. A social worker referred the wife to our office and said “maybe we can help”. When I looked at their situation, my first thought was: “Why didn’t they come to see us in October? We could have protected 100% of their assets.” Yes, we can still protect what they have left –but they would have saved at least \$40K more had they come to us in October. I asked her that very question. Her response: “I didn’t know that there was any way we could get help. No one ever told me.” The nursing home, of course, had no legal obligation to inform her that she might want to explore Medicaid for her husband – and, of course, *their profit motive would be to keep him there as long as possible.* Within 30 minutes of coming to our office, I called a different nursing home which accepts Medicaid for all of their residents and “got the ball rolling” so as to get him moved before the end of this month to the new facility so we could get him on Medicaid and save their remaining assets - and allow her to keep the home, the car and practically all of their combined monthly income.

Second. To qualify for Medicaid, there are 4 tests: (1) be 65 or older (or disabled for social security purposes) (2) meet the “medical necessity” test (3)

pass the “income test” and (4) pass the “assets test”. The test I want to discuss is the “medical necessity” test. This is the requirement that basically says for someone to qualify for Medicaid, they must need that level of care which a licensed vocational nurse would have to provide. The government agency responsible for approving Medicaid applications is not at all sympathetic to approving a Medicaid application when the applicant is not suffering from Alzheimer’s Disease or dementia. Case in point. We had a client who had numerous health problems: in her upper 80’s; not able to transfer; legally blind; on oxygen 24 hours a day –but mentally she was still pretty sharp. The client had the doctor at the nursing home (which, coincidentally happened to be the nursing home mentioned in the preceding paragraph) fill out the paper work to establish medical necessity. The nursing home also helped the client fill out the paper work for the Medicaid application. The result: the government denied the Medicaid application on grounds that the doctor’s letter did not meet the criteria for establishing “medical necessity”. I called the doctor at the nursing home at least 3 times to get his assistance in addressing the problems – however, he did not return my calls. I then contacted a nursing service down in Austin who has a great track record of working on difficult cases where medical necessity is being challenged by the government. They asked us to send all of the client’s medical records to them for review. They then suggested that the elderly lady be examined by her family doctor –and they provided the family doctor with the suggested language to put in his letter. And, the family doctor’s letter was faxed to the government and within 24 hours we had her approved for Medicaid!!

Third. I have previously discussed Veterans’ Aid and Attendance. Basically, this tax free payment is available to vets who: (1) served at least 1 day during a declared war which includes WWII, Korea, Viet Nam and the Gulf War (which started 8/2/90 and is still considered to be on-going) (2) served at least 90 days and got better than a dishonorable discharge (3) is 65 yrs or disabled for SS purposes (4) is “disabled” meaning needs help

with activities of daily living (eg: toileting, bathing, feeding) or is physically or mentally incapacitated (eg: Alzheimers or Parkinsons) or is bedridden (5) and the doctor says he needs a protective living environment. In applying for A&A, the vet has to pass an income test and can have very limited resources (assets). However, as I have explained in a prior Elder Law Today newsletter (Fall of 2012), the vet can legally pass the "assets" test by either gifting outright assets to his children, for example, or transferring the assets to a particular type of irrevocable trust -without incurring a "transfer penalty" (a period of ineligibility). I issued a warning in my Winter 2014-2015 newsletter that the VA was going to implement a 3 year "look back" rule -a period when the vet would not be eligible for A&A for a period of time if he had

made gifts within the 36 months preceding the application. **I just learned that it is highly likely that the look back rule will be effective July 1st of this year.** **THEREFORE, IF YOU OR SOMEONE YOU KNOW WANTS TO TAKE ADVANTAGE OF A&A AND WANTS TO AVOID THIS 36 MONTH LOOK BACK RULE, I STRONGLY RECOMMEND YOU MAKE SURE THAT THE APPLICATION IS FILED BEFORE 7/1/16! BY THE WAY, YOU NEED TO KNOW THAT THIS 7/1/16 IS NOT A CERTAINTY -IT COULD BECOME EFFECTIVE MUCH SOONER!!**

That's it for now! Enjoy the Spring!!

Dan Campbell



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