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TRANSFER OF ASSETS
TO DISBALED CHILDREN
By Thomas D. Begley, Jr., Esquire

The current federal Medicaid statute has been in effect since 1989. Generally, the statute provides that if an individual makes an uncompensated transfer of resources, the value of those resources are divided by the average monthly cost of a nursing home and the resulting quotient is the number of months during which the applicant will be ineligible for Medicaid benefits. The statute further provides that "an individual shall not be ineligible for medical assistance by reason of [the transfer penalty rules] to the extent that...the assets were transferred to, or to a trust...established solely for the benefit of the individual's child [who is blind or disabled]."

For 20 years New Jersey interpreted that statute to mean that if a parent transferred assets directly to a disabled child, the transfer was exempt from the Medicaid transfer of asset penalty. In 2009, without any change in federal or state statute or regulations New Jersey changed its interpretation and said that if assets are transferred directly to a disabled child, a transfer of asset penalty would be imposed. The state's position was that only assets transferred to a trust solely for the benefit of the disabled child were exempt from the imposition of the transfer of asset penalty.

In a recent case, two individual transferred assets directly to their disabled children. The State rejected the Medicaid applications and imposed transfer of asset penalties. The State asserted that only those transfers that were made to an irrevocable trust established for the sole benefit of a disabled child are eligible for an exemption from the transfer penalty rules.

The plaintiffs filed suit in U.S. District Court to obtain a preliminary injunction enjoining the State of New Jersey from treating an outright transfer of assets to a blind or disabled child as a penalized transfer. The District Court held that the plaintiffs are likely to succeed on the merits of their claim and that irreparable harm would result to the plaintiffs in that there is a serious risk of discharge from nursing facilities and an inability to recover improperly withheld benefits after

trial on the merits. The court granted the preliminary injunction. In its analysis, the Court said that the relevant statute reads, "An individual shall not be ineligible for medical assistance by reason of paragraph (1) to the extent that...the assets were transferred to, or to a trust (including a trust described in subsection (d)(4) of this Section) established solely for the benefit of, the individual's child [who is blind or disabled]." The dispute between the parties concerned the phrase "solely for the benefit of." The Medicaid applicants argued that the phrase applies only to transfers made to a trust, while the State insisted that the phrase also applies to transfers made to the individual's child. The Court held that the State's position was untenable. "The phrase 'solely for the benefit of' follows the words 'a trust.' The clause is set off by commas from the rest of the passage, suggesting that the 'solely for the benefit' language is suppose to apply to the noun that immediately precedes it. Once that clause is set off from the rest of the sentence the passage reads, 'An individual shall not be ineligible for medical assistance by reason of paragraph (1) to the extent that...the assets were transferred to the individual's child.' The rating is further supported by the fact that the 'solely for the benefit of' language appears to be modifying the word 'established.' The word 'established' must in turn be referring exclusively to 'a trust.' In summary, it is syntactically implausible to maintain that the 'solely for the benefit' language applies to transfers directly to the applicant's child." Consequently, the statute has the effect of exempting any transfer of resources made directly to an applicant's blind or disabled child, regardless of whether the transferor makes special arrangements to ensure that the transfer is for the child's sole benefit. The Court also noted that the State Medicaid Manual specifically states that the transfer of asset penalty does not apply if "assets were...transferred to the individual's child, or to a trust...established solely for the benefit of the individual's child."

The result of this case is that transfers of assets made directly to a disabled child are exempt from the Medicaid transfer of asset penalty just as they have been for the past 20 years.

42 U.S.C. §1396p.

2 42 U.S.C. §1396p(c)(1)(A) & (B).

3 42 U.S.C. §1396p(c)(2)(B)(iii).

4 Sorber v. Velez, United States District Court, District of New Jersey, Civ. No. 09-cv-3799 (Oct. 23, 2009).

Speakers

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