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MEDICAID:

Protect Your Assets Part 2

By David A. Cutner, Esq.

This article is the fourth in a series of articles about Elder Law

In last month's article, "MEDICAID: Protect Your Assets," we considered Mary's case, which raised a number of interesting issues regarding Medicaid and home care. Even though Mary had not done any planning in advance, with the advice of her Elder Law attorney, she was able to protect her home, her savings, and her income, and obtain Medicaid benefits as well.

This month, let's consider Sara's case, which raises a number of different issues since Sara needs nursing home care.

Sara is a widow, 76 years of age. She is still living in the co-op apartment in the Bronx that she and her husband purchased in 1971 for \$42,000. That apartment is now worth \$325,000.

Sara has savings of about \$450,000, due to the fact that Sara's husband had been a stockbroker and had invested their savings wisely. Sara receives Social Security and a small pension, which total about \$2,200 per month. Since there is no mortgage on Sara's co-op apartment, she has enough money for her normal living expenses.

Very recently, however, Sara suffered a stroke which left her paralyzed on the left side of her body. In addition, Sara's mental capacity is noticeably diminished at certain times during the day, and her doctor says that she probably has early stage Alzheimer's disease.

Sara's children, Tom and Linda, wanted to bring her home from the hospital because they felt that she would be more comfortable in familiar surroundings. However, the hospital and Sara's doctor strongly recommended that Sara be placed in a nursing home. They argued that Sara needs skilled nursing care, and that her mental capacity is likely to diminish.

Reluctantly, Tom and Linda visited a few nursing homes to see if they could find a suitable placement for Sara. Tom and Linda were pleasantly surprised to find that a couple of the nursing homes were very appealing, with bright, cheery rooms, lots of activities and therapies, and dedicated staff.

Tom and Linda became very concerned, however, about the prognosis for Sara's financial health. Tom and Linda learned that the nursing home would cost at least \$15,000 per month, and they didn't need a calculator to realize that Sara's assets would quickly be depleted by this expense.

Linda suggested that they make an appointment with an Elder Law attorney to find out whether anything could be done to protect Sara's assets.

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The Elder law Attorney advised that – unlike situations where people need home care – gifts or transfers of assets to family members are usually subject to a Medicaid penalty. The only exceptions are transfers to spouses or minor or disabled children. In order to have avoided a penalty, Sara would have needed to transfer her assets at least three years ago. Going forward, gifts or transfers are not immune from a penalty for five years. This is the so-called “look back period.”

Tom and Linda were a little confused about the “look back period” and the penalty, and asked the Elder Law attorney to clarify this point. They also asked if Sara gave them money, could Medicaid make them pay the money back.

The Elder Law attorney explained that the “look back period” is Medicaid’s radar screen. If an applicant for Medicaid nursing home benefits makes a gift or transfer of her assets, the transfer will be on Medicaid’s radar screen and Medicaid will then impose a penalty. However, Medicaid cannot make anyone give back a gift, or compel an applicant to retrieve a gift.

Medicaid’s penalty is to make the applicant ineligible for benefits for a period of time. The penalty is calculated by dividing the amount of the gift by the regional monthly cost of nursing home care. The result of this calculation will be a number of months during which the applicant is ineligible for benefits. For example, if Sara transferred \$100,000 to Tom, and the regional cost of care in Bronx County were \$9,636, then the penalty would be 10.4 months.

Linda then said, “I understand now how the penalty works, but when does it start?” The Elder Law attorney replied, “good question, let me explain.” The penalty starts the first day of the month after the date when the applicant moves into a nursing home, and has completed the transfer of her assets. The application for Medicaid benefits can then be filed, and the penalty will start to run, assuming the applicant is otherwise eligible for Medicaid.

Tom and Linda were now totally discouraged. If Sara transferred her assets (worth \$725,000) to them, the penalty would be longer than the five year “look back period.” And if they privately paid for Sara’s care for five years, all of Sara’s assets, including her co-op apartment, would be lost.

The Elder Law attorney told Tom and Linda not to despair. With good planning, there are perfectly legal and proper ways to protect and preserve about one-half of Sara’s assets. Sara’s Social Security and pension, however, would have to be paid to the nursing home, and Sara would be allowed to keep only \$50 per month.

“But isn’t it too late to plan?” asked Tom and Linda. “Not at all,” said the Elder law attorney. “If we had started sooner we might have been able to save all the assets, but even now, we can save about half.”

“Let’s get started,” said Tom and Linda.

The work required to execute the plan to preserve assets in cases similar to Sara’s case is complicated and complex. The services of an experienced Elder Law attorney will likely be needed, but the good news is that a satisfying result can be obtained.

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