

Texas Elder Law FaxLetter

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A FREE BUSINESS AND LEGAL UPDATE OF CURRENT EVENTS AFFECTING THE ELDERLY ♦ JANUARY 2003 EDITION

MEDI- MINUTES

Court Blocks Son's Medicaid Planning on Mother's Behalf



A New Jersey appeals court has blocked the efforts of a guardian, who is also his ward's son, to engage in Medicaid planning on behalf of his mother. His plan was to sell his mother's house, gift part of the proceeds to himself and his brother, and use the remainder to pay for his mother's care during the period of ineligibility resulting from the uncompensated transfer. The court refused to authorize the plan.

Mildred Keri, the ward, is 88 and lives alone. Her two sons, Richard and Charles, alternate daily visits. In 1996, she executed a general power of attorney (POA) naming Richard as her agent, but the POA did not authorize him to make gifts on her behalf. She has refused her sons' offers to allow her to live with them, preferring to remain in her own home. Due to the onset of dementia, Mildred is no longer able to provide for her own safety and welfare. Therefore, Richard sued to be appointed as her guardian.

He also sought permission to execute the following plan to qualify his mother for Medicaid:

1. Sell Mildred's home for \$170,000 and place her in a nursing home;
2. Gift \$92,000 of the proceeds to himself and his brother;
3. Use the remaining \$78,000 to pay for Mildred's nursing home care during the period of ineligibility resulting from the \$92,000 gift.

A trial court found Mildred incompetent, named Richard as her guardian, and ordered the sale of Mildred's home, but the court refused to allow the Medicaid plan. The Appellate Division of the Superior Court of New Jersey affirmed the denial of the plan, but reversed the order to sell Mildred's home and place her in a nursing home.

The Court reasoned that Mildred, while incompetent, "was nonetheless able to express a desire to remain in her own home, an option her guardian did not pur-

sue." New Jersey has allowed a guardian to engage in Medicaid planning by gifting the ward's assets to the ward's spouse, but the Court saw this case differently. Not only were the beneficiaries of the gift the ward's adult, self-sufficient children, but one of them was the guardian. The Court remanded the case and recommended that the trial court appoint the Public Guardian to protect Mildred's interests.

In the Matter of Keri (NJ Super. Ct., App. Div., No. A-5949-01T5, 12-19-02)

LEGAL LINES

Nursing Home Stuck with the Bill After Misinforming Patient About Medicare

A Tennessee nursing home has been barred from collecting from a patient's estate because an employee of the facility incorrectly assured the patient's family that Medicare would cover the bill.



Martha Spencer was admitted to NHC Health Care in October 1999. At that time, an employee of the nursing home told Martha's family that Medicare would cover the bill. The same employee assured the family repeatedly that Medicare would pay for Martha's care, even after the family told the employee that Martha had had a previous nursing home stay, which could reduce the number of days for which she was eligible for nursing home coverage. In fact, the family told the nursing home that if Martha did not have enough days of coverage left, they would take her home and care for her themselves. Still, even up to Martha's death in February 2000, NHC billed Medicare and assured the family that the care was covered.

However, due to her prior nursing home stay, Martha was only eligible for three days of coverage. Medicare began to withhold payments from NHC to recoup the \$26,000 in payments the program had improperly made for Martha's care. The nursing home sought to recover the money from Martha's estate.

A trial court ruled that the nursing home was estopped from collecting from the estate, and the Tennessee Court of Appeals, finding that NHC was "egregiously negligent," agreed. According to the

court, "NHC dealt with Medicare on practically a daily basis and would be expected to have much more knowledge of the rules and regulations promulgated by Medicare than Ms. Spencer or [her family]."

In re Estate of Spencer (Ct. App. Tenn., No. M2001-02187-COA-R3-CV, 11-26-02)

DID YOU KNOW!

Green Trees Good for the Life Span



Greenery and sunshine may help you live longer, according to a recent study in Japan. Researchers studied 3,144 people born between 1903 and 1918 who lived in densely populated urban areas of Tokyo. Those who lived near grassy or tree-filled walking areas and those who lived near parks or on tree-lined streets were the most likely to survive during a five-year period.

Why? The scientists believe it has to do with walking. Seniors who live near parks or on "walkable green streets" may be more likely to answer the call of the great outdoors.

Source: Reuters Health 11-26-02

ANNOUNCEMENTS

Out & About

Michael B. Cohen will be speaking on "Planning for the Elderly" at 9:00 a.m. at the Wilshire Baptist Church, located at 4316 Abrams, Dallas, Texas, January 25, 2003.

He will also discuss recent cases involving Medicaid planning at the meeting of the Texas chapter of the National Academy of Elder Law Attorneys on February 1, 2003. The meeting is being held at the Embassy Suites Outdoor World, Grapevine, Texas (near D/FW airport).

Texas Elder Law FaxLetter by E-Mail

Although there was not enough demand to set up the *Texas Elder Law FaxLetter* by e-mail at this time, we hope to soon have our website, www.dallaselderlawyer.com, fully constructed in the next couple of months to allow readers to view each monthly issue online.