MEDICAID ELIGIBILITY FOR MARRIED INDIVIDUALS

Most of the long-term institutional care in the United States is financed by the Medicaid (not the Medicare) program. Medicaid is a form of welfare and, therefore, individuals become eligible only after they are "impoverished" under the program's guidelines. In Northeast Ohio, nursing home costs average more than $6,000 a month. The result is that most people pay out of their own pockets until they become eligible for Medicaid.

Medicaid rules contain protections for married couples and are intended to prevent impoverishment of the spouse who remains in the community. What those rules are, and how they can be best employed, are things that require individually tailored legal advice. Different situations make different approaches more or less successful. Here are general guidelines.

The Asset Rules

Medicaid law provides special asset protections for the spouse of a nursing home resident. First, and most important, if the “community spouse” resides in the family home, that home is an “exempt” asset regardless of its value. To be exempt, the home must be titled to one or both spouses, and not to a trust. Other “exempt” assets are one car regardless of value, very small life insurance policies, cemetery plots for the family, and irrevocably prepaid funeral arrangements for both spouses.

As to other assets, the spouse of a married Medicaid applicant is permitted to keep one-half of the couple's combined assets, with a ceiling of $109,560 and a floor of $21,912. These are 2011 figures and are adjusted annually. The evaluation and counting of the couple's assets is done “as of” the first day of any period exceeding 29 consecutive days when the ill spouse is out of the home and in a medical institution (hospital, nursing home, rehabilitation facility). That day is often called the “snapshot” date.

It is most important to understand that any necessary reduction of the couple’s assets need not be accomplished solely by paying the nursing home. There are many ways in which assets can be legitimately used for goods and services that benefit the community spouse. Part of the value of legal advice is in identifying what those are in a particular situation. Whether or not assets can or should be reduced by giving them away is a more complicated topic, discussed below.

The Income Rules

Medicaid’s income eligibility rule is simple. If the institutionalized spouse’s own income is not enough to pay the nursing home charge, then he or she is eligible. Once a Medicaid application is approved, the income of the community spouse is his or hers to keep no matter how much (or how little) it is. It need not be used to help pay for the other spouse's care.

In addition, the community spouse may be entitled to keep a portion of the institutionalized spouse's monthly income. Medicaid rules set $1,821 per month (as of July 1, 2010) as the minimum monthly amount needed by a community spouse, and that amount can rise depending upon housing expenses or unusual circumstances. If the community spouse's income falls short, then he or she can keep so much of the institutionalized spouse's income as necessary. The rest of the institutionalized spouse's monthly income, less a $40 allowance and less the premiums for health insurance, is payable to the nursing home.

The Transfer Penalty

Medicaid rules have always discouraged reducing assets by giving them away, and those rules were changed in 2006 to make it even more difficult.

Any gifts made by an individual or his or her spouse within five years (the "look-back period") of applying for Medicaid will be evaluated. It will be presumed that such gifts were made for the purpose of "saving" assets, and it is usually difficult to overcome that presumption. The applicant will be penalized for gifts made within the look-back period. That penalty is a period of time, measured in months, during which Medicaid will not help pay the nursing home. The penalty's length is calculated by dividing the total given away by $6,023. Thus if an applicant had given away $60,000, he or she would have to find a way to pay the nursing home for 10 months despite being poor enough to otherwise qualify for Medicaid.

Giving away assets to certain individuals does not trigger a penalty. Those individuals include (1) a spouse, (2) a blind or disabled child, or (3) a trust solely for the benefit of a blind or disabled child, or of any disabled individual under age 65. In addition, one may transfer the home to (1) a child under age 21, (2) a sibling who owns part of the home and has lived there during the year preceding the applicant's institutionalization, or (3) a child who has resided in the home for at least two years prior to the parent's nursing home admission, and who has provided care during that period but for which the parent would have required nursing home care.

The Application Process

The County Department of Job & Family Services administers the Medicaid program. Lorain's is located on North Ridge Road (S. R. 254), just west of its intersection with Elyria Avenue, and across from the Sheffield shopping center. The application is usually made on a paper form, although the State is encouraging people to apply electronically *via* it web site (www.jfs.gov). It is followed by a meeting with a case worker, who reviews financial and personal information to judge the applicant's eligibility. That information must be properly verified, and acceptable documentation is sometimes difficult to obtain.

The application process can drag on if the case worker requests detail regarding financial activity throughout the five-year look-back period. If the applicant does not comply with these requests on a timely basis, the application may be denied.

Additionally, after Medicaid eligibility is established, it must be reviewed every year. The first review is the hardest for a married individual. Although the titling of assets was immaterial in the application process, Medicaid rules require that by the end of the first year the eligible individual must demonstrate that he or she has transferred to the community spouse all non-exempt assets except for a maximum of $1,500. Thereafter, to preserve ongoing eligibility, it is essential that the individual's non-exempt assets fall below $1,500 at the end of each calendar month.

Estate Recovery

The State has the right to recover whatever benefits it paid for the care of the Medicaid recipient (1) from any assets he or she owned at death, and (2) only after the death of the surviving spouse.

Conclusion

Medicaid eligibility rules are complicated and full of details. Relying on street wisdom to understand them is a mistake. Individuals who need to know the "rest of the story" should consult with someone who is practiced and able to tell it.

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