



THE NATURE COAST LAW OFFICES OF
GREGORY G. GAY P.A.
PLANNING FOR A LIFETIME™

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May 21, 2019

Clients

Re: Medicaid Planning for Mrs. Client

Dear Mr. Client:

Florida's Institutional Care Program (ICP) is administered through its Department of Children and Family Services. This program assists a patient with the cost of custodial nursing home care. This program is partially funded with Federal Medicaid dollars distributed to the states. With a few exceptions known as Medicaid "waivers," this program assists only those patients who meet the eligibility requirements and are continuously confined to long-term nursing care facilities.

In order to receive Medicaid assistance, it is necessary to be "income," "asset" and "health eligible". Each of these requirements is discussed below.

The benefit of receiving eligibility under the Medicaid program is that a portion, of the cost of the nursing care will be paid by the Florida Department of Children and Family Services. The funds for the program are derived in part from state and federal monies. All of the money which is received by your spouse, Mrs. Client, each month (her income) will have to be paid toward this cost.

Health Eligibility

The health eligibility is determined by a test administered by the nursing home, and an applicant must be medically needy in order to receive Medicaid. In other words, an individual must need to be institutionalized in a nursing facility. I have had individuals who appropriately reside in a nursing facility who have not passed the eligibility screen.

Income Eligibility

In addition, an applicant, for the calendar year 2019, must have gross income of \$2,313.00 or less per month without having to establish a Qualified Income Trust for the excess over \$2,313.00. This amount is adjusted annually on the first day of each year. The adjustment has always been upward as the cost of living is adjusted upward. The spouse in the community is allowed to have at least a total monthly income in the amount of \$2,058.00. As a community spouse, if your monthly income is less than the \$2,058.00, then a portion of your spouse's monthly income could have diverted to you. However, since your income exceeds the monthly income limit, this will not occur.

It is my understanding from the information that you have provided me that your spouse's gross monthly income presently consists of the following: \$767.000 from Social Security (that includes the Medicare Parts A and B premiums), approximately \$385.43 from her IRA's RMD, and \$700.00 for one-half of the rental income (if you don't remove your wife's name from the deed). Therefore, your spouse's total monthly income is estimated to be \$1,852.43. If you proceed to remove your wife's name from the rental property deed, then her monthly income is estimated to be 1,152.43 per month.

It is my understanding from the information that you have provided me that your gross monthly income presently consists of the following: \$1,571.00 from Social Security (that includes the Medicare Parts A and B premiums), 198.00 per month from your pension, \$448.15 per month from your IRA's RMD, and the current income of one-half of the rental property in the amount of \$700.00. Therefore, your total monthly income is estimated to be \$2,917.15. However, if you proceed to remove your wife's name from the rental property deed, then your monthly income is estimated to be \$3,617.15 per month.

Since your spouse's total monthly income is currently 1,852.43, it will not be necessary for you to establish a Medicaid Qualified Income Trust (MQIT) for your spouse since she is not above the allowed amount of \$2,313.00.

Asset Eligibility

When applying for Medicaid, certain assets are considered "exempt" which means the applicant can retain these assets and still receive Medicaid assistance. All other assets are considered as "non-exempt" or "countable", which essentially means an applicant must "spend" the countable assets before becoming eligible for Medicaid (subject to the rights of a "community spouse" to retain a community spouse resource allowance (CSRA)).

Assets

All assets in which your spouse owns an interest, regardless of how they are titled, are reviewed at the time of your spouse's institutionalization in the nursing home. The homestead and one automobile of any age and another automobile that is over seven (7) years old are not

countable.

If you sell your homestead, the net proceeds realized from the sale become a countable asset. However, if you purchase another home and declare homestead, then the proceeds are exempt from being a countable asset.

An irrevocably purchased funeral and burial lot for your spouse and you are also excluded as non-countable assets. In addition, you and your spouse may set aside up to \$2,500.00 each in for burial expenses in a savings account titled one in your name and the other in his name and designated as burial account and payable upon death to you, living, or to a family member.

It is my understanding from the information you provided to me that your spouse presently owns the following life insurance policies:

1. Pacific Life Insurance Policy with a face value of \$50,000.00 and a cash value of \$50,000.00. This asset is a countable asset, since the face value of this policy does exceed the limit of \$2,500.00.
2. Protective Life Insurance Policy with a face value of \$33,072.58 and a cash value of \$29,795.12. This is a countable asset, since the face value of this policy does exceed the limit of \$2,500.00
3. Unified Life Insurance Auto Accident Coverage with a face value of \$6000.00 and a chase value of zero. This asset is a non-countable asset, since the policy has no cash value.

It is my understanding from the information you provided to me that you presently own the following life insurance policies:

1. Prudential Life Insurance Policy with a face value of \$56,570.00 and a cash value of \$42,285.00. This policy is a countable asset, since the face value of this policy does exceed the limit of \$2,500.00. At this time, I would recommend that you change the beneficiary of this life insurance policy to be your _____, _____ as the primary beneficiary and your _____, _____ to be named as the contingent beneficiary.

In addition, an Individual Retirement Account owned by your spouse or you whereby the earnings are not being deferred, but instead are being "paid out" over a term not exceeding his or your life expectancy, will not be considered countable assets. It is my understanding, from the information you provided to me, that your spouse owns the following Individual Retirement Account and that she is receiving the required minimum distribution payment on an annual basis.

1. IRA for Mrs. \$114,031.14

It is my understanding, from the information you provided to me, that you own the following Individual Retirement Accounts and that you are receiving the required minimum

distribution payment on an annual basis. At this time, I would recommend that you change the beneficiary of this policy to your _____, _____ as the primary beneficiary and your _____, _____ as the contingent beneficiary.

1. IRA for Mr. \$113,086.86

It is my understanding, from the information you provided to me, that your spouse and you have countable assets as follows:

<u>Date</u>	<u>Asset</u>	<u>Amount</u>	<u>Owner</u>
04.29.2019	Suncoast Schools Federal Credit Union Regular savings	\$	Joint
04.29.2019	Suncoast Schools Federal Credit Union Senior checking (This account will need to be reduced to \$1,800.00 prior to Applying for Medicaid, the balance of this account will Need to be transferred to a new account solely in the name of Mr. Client to be used for the purchase of the Medicaid Qualifying Annuity explained below).	\$	Joint
04.29.2019	Suncoast Schools Federal Credit Union Money Market (This account will need to be closed and the proceeds Placed into Mr. Client's solely owned account to be used for the purchase of the Medicaid Qualifying Annuity, explained below). It may not be necessary to use this portion of the proceeds to purchase the Medicaid Qualifying Annuity. However, all of the proceeds must be solely owned by Mr. Client and Mrs. Client can only own \$2,000.00.	\$	Joint
04.29.2019	Prudential Annuity. (This account will need to be closed and the proceeds Placed into Mr. Client's solely owned account to be used for the purchase of the Medicaid Qualifying Annuity, explained below).	\$	Mrs.
	Total of Countable Assets	\$?????	

Give-Back Rule

Under the present law, there is a period of ineligibility for Medicaid eligibility purposes when assets are given away. If a transfer (or gift) is made this month, there presently a 60 month look back period preceding the latter of the date of institutionalization or the date filing of the Medicaid application (the "look back date"), those transfers or gifts will cause a period of ineligibility for benefits. The period of ineligibility is determined by dividing the value of the gift by \$9,171.00, which is presently the average cost of a nursing home in Florida. It is my understanding that you nor your spouse have made gifts in the past sixty (60) months. Please advise if this information is incorrect.

Payment of Assets in Exchange for Consideration

Your spouse is permitted to pay for the purchase of assets. Such purchases do not constitute a gift if the assets are acquired for fair market value. One strategy in this case would be for you to purchase a bigger home or complete repairs on the home. It is important to keep in mind, however, that her funds must be depleted prior to applying for Medicaid Assistance.

Eligibility

Since Medicaid is an impoverishment program, your spouse can only retain \$2,000.00 of countable assets. You as the community spouse, however, could retain a community spouse resource allowance without a fair hearing in the amount of \$126,400.00. Based on the information you have provided to me, your jointly owned countable assets total is \$ _____, which is \$ _____ over the allowed asset limit and this money will have to be used in one of the following ways in order for your spouse to be qualified to receive Medicaid assistance.

Shifting of Countable Assets to an Income Stream for the Spouse

When an individual purchases an annuity, he or she generally pays to the insurance company that issues the annuity a lump sum of money, in return for which he or she is promised regular payments of income in certain amounts. The payments may continue for a fixed period of time (for example 10 years) or for as long as the individual (or another designated beneficiary) lives, thus creating an ongoing income stream.

Annuities, although usually purchased to provide a source of income for retirement, are occasionally used in conjunction with Medicaid planning. To avoid penalizing persons who validly purchased annuities as part of a retirement plan, but to capture those annuities that were purchased to shelter assets, a determination is made by the Department of Children and Family Services with regard to the ultimate purpose of the annuity. If the expected return on the annuity is

commensurate with a reasonable estimate of the life expectancy of the beneficiary, the annuity is deemed sound for actuarial purposes and is not considered to have been purchased to shelter assets.

To determine that an annuity is sound for actuarial purposes, the life expectancy tables, compiled from information published by the Office of the Actuary of the Social Security Administration, are used. The average number of years of expected life remaining for the individual must coincide with the life of the annuity. If the individual is not reasonably expected to live longer than the guaranty period of the annuity, the individual will not receive fair market value for the annuity based on the projected return. In this case, the annuity is not actuarially sound and a transfer of assets for less than fair market value has taken place, subjecting the individual to a penalty. The penalty is assessed based on a transfer of assets for less than fair market value that is considered to have occurred at the time the annuity was purchased. For example, a male at age 65, has a life expectancy according to the table is 17.19 years. Thus, if he purchases a \$10,000 annuity to be paid over the course of 10 years, the annuity is actuarially sound. However, a male at age 80 has a life expectancy of only 7.90 years. Thus if he purchases an annuity to be paid over 10 years, the payout for approximately 3 years is considered a transfer of assets for less than fair market value and that amount is subject to penalty.

The annuity must include a remainder clause stating that if the person who owns the annuity dies before receiving all of the annuity payments, the primary beneficiary of the undistributed annuity funds is the State of Florida to the extent of the amount it has paid for the institutionalized spouse's nursing home expenses. Whatever is remaining in the annuity is then paid to a designated beneficiary. It is extremely important that you confirm that you have the agreement of the insurance company you select to make the annuity comply with these required provisions. In addition, the annuity must be paid in equally monthly principal installments with interest and must also be irrevocable and non-assignable.

I recommend that you do any home improvements you deem necessary, and then transfer the remaining balance after home improvements which is presently \$ _____ to a Medicaid Qualifying Annuity and that the payback be monthly over four year payback period. The approximate monthly payment from this annuity would be \$ _____. PLEASE DO NOT PURCHASE THIS ANNUITY WITHOUT OUR FIRST MEETING WITH _____ WHO IS THE INSURANCE AGENT AND IS QUALIFIED TO WRITE THIS TYPE OF ANNUITY.

Spend Down of Excess Resources (The Current Plan)

If you were to apply to the Department of Children and Family Services at this time, it would inform you that you must "spend" all of your joint assets in excess of \$126,400.00, at which time your spouse will be eligible for Medicaid nursing home assistance. It is not an attractive option to "spend down" because you need these excess funds for your future support. This is the option you are facing if you do no planning.

Shifting of Countable Assets to Exempt Assets

The regulations authorize an individual to "shift" or "convert" countable assets to exempt assets in order to meet the "asset" test and to qualify for Medicaid more quickly. Therefore, it is possible for you to use the "spend down" cash to purchase exempt assets (such as replacing your jointly owned vehicle or purchasing a larger residence for you or replacing appliances in your residence).

Transfer of Assets

There are specific rules regarding the transfer of assets and the period of ineligibility for Medicaid. The "look-back" period begins in the month a Medicaid application is made, during which an uncompensated transfer of assets will affect eligibility for Medicaid. The present look back period as explained above is currently 60 months.

The period of ineligibility refers to the time period when a person is not eligible for Medicaid benefits because of a transfer of assets. This period begins on later of the following: (1) the first date of the month after an application is filed and the applicant meets all other program criteria for long term care under Medicaid; (2) the first day of the month the in which the individual transfers the assets or (3) the first day following the end of an existing penalty period.

If the nursing home patient presently applies for Medicaid within the sixty (60) month look-back period, the transfer penalty period may be extended beyond sixty (60) months because there is no maximum penalty period of ineligibility. If a nursing home patient waits until after the penalty period and then applies for Medicaid, the transfer of assets will not be considered in determining eligibility.

In closing, do not be overwhelmed by the options that you must consider. They are many and they are confusing. Once you have had an opportunity to review this analysis, we will meet for an appointment to address any questions you or your family may have. I note that I presently have an appointment time to meet with you on Monday, _____ at _____ in our Brooksville office.

Yours truly,

Gregory G. Gay, Esquire