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Medicaid – Caretaker Child Exception to Asset Transfer

One technique used to protect assets by a Medicaid applicant is called the “Caretaker Child Exception”. This is available when a child is caring for a parent in the parent’s home and the care is for at least two years. The parent can then later transfer his or her personal residence to that child and still qualify for Medicaid benefits. In all other situations, a parent’s transfer of a personal residence to anyone else would subject him or her to a penalty for Medicaid benefits if done within 60 months of a Medicaid application.

The specific exception for the caretaker child is to recognize the caretaker child’s sacrifice and assistance given to his or her parent in order to keep the parent out of a nursing home. The catch is that the child must be providing a level of services to the parent that without such services the parent would have had to go to a nursing home.

Many children qualify for this exception and should take advantage of it if nursing home care is in the future for their parents. You just have to make sure you qualify as the caretaker child in order to have the transfer be exempt from any penalties.

A recent case in New Jersey, *M.K. v. Division of Medical Assistance and Health Services* (N.J. Super. Ct. App. Div., no. A-0790-14T3) a New Jersey Court of Appeals held that the Caretaker Child Exception did not apply to a Medicaid applicant who transferred her house to her daughter. The reason for the denial was the fact that the daughter did not provide “*continuous care*” for the two years before her mother entered a nursing home and applied for Medicaid.

The facts established were that the daughter began living with her mother in 2004 because her mother suffered health setbacks. The daughter had to help with dressing, toileting, meal preparation, and house cleaning. Later, in 2007, the mother hired a home health aide to assist her for part of each day; however, the mother was alone for five hours a day.

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**Free
Workshops**

November 15, 2018

Bartlett Country Club

Olean, NY

6:30 to 8:30 p.m.

November 29, 2018

Goode’s Family Restaurant

Gowanda, NY

6:30 to 8:30 p.m.

Special Guest: Rick Andersen

October 23, 2018

Chanderson’s

Steak & Seafood

Yorkshire, NY

6:30 to 8:30 p.m.

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In 2010, the mother entered a nursing home but left after one month and moved into her son’s house for a five-month stay. Thereafter, she re-entered the nursing home. It was then that the mother transferred her home to her daughter and applied for Medicaid.

The State of New Jersey denied the mother’s Medicaid application based upon the transfer of her home to her daughter. The mother appealed the decision, arguing that the transfer to her daughter fell under the Caretaker Child Exception. After a hearing on the matter, the state still denied the mother’s application, stating that the daughter did not provide a sufficient level of care preventing institutionalization for two years before the mother entered the nursing home. Mother appeals.

The appellate court affirmed the state’s decision that the exception does not apply, because the two years immediately before the mother’s institutionalization included “... a period of approximately five months when [the daughter] provided no care for [the mother] who resided with her son.”

Another significant, but not emphasized, element of the case was the fact that the appellate court determined there was no evidence that the daughter provided a level of care which prevented the mother’s institutionalization, and the mother initially went to the nursing home for only one month.

For the Caretaker Child Exception to work, there are two things to bear in mind. First, the care must be continuous. Does this mean the child must to be at the parent’s side 24/7? No, everyone needs a break once in a

while, but those breaks should be infrequent. Second, the care the child gives must qualify as care that would be required to keep the parent out of the nursing home. When attorneys at Brooks & Brooks are involved with these situations, one question we always ask is “Were it not for the services you provided to your parent, would he or she been able to live at home?” The Caretaker Child Exception is earned because of the required services the child must provide to keep a parent out of the nursing home for at least two years. Proper counselling in this and any other Medicaid situation is important, which is why we devote a substantial part of our practice to this area of the law.

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Although the case of *Fedele v Harris*, (DCNY., 2018-2USTC ¶ no. 50, 350), dealt principally with a question of violation of the federal tax confidentiality statute, the case is worth noting. The New York State Department of Taxation and Finance conducted an investigation of its own employees who claimed excessive job-related expense deductions on their own New York State tax returns. Apparently the employees were claiming that the federal tax confidentiality statute prohibited their own employer from investigating them. **They lost.** It is somewhat heartening to know that someone is watching over the people who watch over us.