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April 6, 2009

Elder Law Minute

Homeplace Transfer to Child: Follow-Up

Last week I wrote about a Barrow County case where a nursing home Medicaid applicant transferred homeplace property to his care-giving daughter. DFCS imposed a transfer penalty because the daughter lived in one trailer and the applicant in an adjacent one. DFCS contends that the daughter did not live in the applicant's home and therefore was not eligible to receive the property without a penalty.

We are in the process of transferring the homeplace property back to the applicant's name because the nursing home has been threatening discharge since January, due to lack of payment. If we were to pursue an appeal of the transfer penalty the nursing home would not be paid by Medicaid until the appeal is final and is likely to discharge the applicant in the meantime.

By transferring the homeplace property back, the transfer penalty issue should become moot and the case should be approved retroactive to October 1, 2008. The homeplace is exempt since its value is under \$500,000. However, any income generated by the property will count as the applicant's income and the property will be ripe for recovery upon the applicant's death.

Therefore, I have advised the applicant to consider gifting the property to his care-giving child once again after the transfer penalty has been removed and the nursing home has been paid. DFCS then would likely suspend benefits due to the transfer. Because DFCS would be suspending benefits that had previously been approved, the burden of proof would be on the agency on appeal. OSAH Rule 7(d). And the applicant has the right to continue to receive benefits while the appeal is pending. MEDICAID MANUAL APPENDIX B. So, the nursing home will be paid pending resolution of the case and discharge should not be necessary.

I will keep you apprised as the case progresses. If you have any insights that you would like to share with me, I would be delighted to hear from you.

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