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ELDER LAW MINUTE

As I sit down to write this week's issue of ELM, my mind is consumed with a case I have before the Office of State Administrative Hearings on appeal.

I represent a nursing home resident who has a daughter who is disabled. Before my client applied for Medicaid she transferred substantially all of her assets into a trust for this daughter.

MEDICAID MANUAL § 2342-3 states:

A transfer of assets penalty does not apply if any one of the following conditions is met: ... The assets were transferred to a trust established for the sole benefit of (1) A/R's disabled child or (2) a disabled individual who is under 65 years of age. Use the same definition of sole benefit of as for transfer to a spouse. See Section 2502, Chart 2502.1.

DFCS takes the position that the trust for the disabled daughter must be a Special Needs Trust which passes muster with the legal department of the Department of Community Health, and that the assets transferred to the trust must themselves be exempt resources.

Not only does the Medicaid Manual not expressly contain these requirements, it states that it is only necessary to meet any (not all) of six requirements in order to successfully transfer assets without a penalty.

If any of you have had a similar case involving this issue, I would appreciate hearing from you. In a future edition of ELM, I will let you know how the cross motions for summary determination are decided.