

IRA M. LEFF

AND ASSOCIATES

ATTORNEYS AT LAW

1800 CENTURY PLACE, N.E.
SUITE 100
ATLANTA, GEORGIA 30345

WWW.IRALEFF.COM

IRA M. LEFF

IRALEFF@BELLSOUTH.NET

DIRECT DIAL: (404) 633-1801
FACSIMILE: (404) 634-4300

October 20, 2008

ELDER LAW MINUTE

Effective May 1, 2005, promissory notes generally count as resources for purposes of Medicaid's resource test. Prior to that time it was common for an applicant to loan out money to his children in order to convert his cash to a then exempt resource. Typically, these notes were long-term, unsecured, and interest free.

When Medicaid reversed its policy on notes, it did not grandfather in pre-existing loans. However, it did provide a mechanism to rebut the presumption that the value of the note was the outstanding principal balance.

The A/R can obtain appraisals of the note from two knowledgeable sources regularly engaged in the business of making such evaluations. If both brokers provide a value for the note then the Medicaid Manual says to *count the higher offer as a resource*. MEDICAID MANUAL § 2314-4.

I always took the position that if neither appraiser offered to buy the note then the value was zero. My interpretation was based upon an April 15, 2005, DHR training on this new provision during which, Anita Oliver, the head of the State consulting group provided a power point slide which said if neither broker offers to buy the note then the note has a zero resource value.

I have a case in Columbia County now where DFCS takes the position that *offer* really means *estimated value*. In this case, the higher appraisal was \$360 which puts my client over the resource limit. The new head of the State consulting group agrees with the caseworker that *offer* means *value*.

I wanted to make you aware of this unresolved issue and see if any of you have had a similar experience with it.

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