



Applying for Medicaid for Nursing Home Care

written by: Carl B. Zacharia, Esq.



www.SeniorCareRes.com

Introduction



My name is Carl Zacharia. I am the founder of Zacharia Brown PC and Senior Care Resources LLC. Zacharia Brown has been practicing Elder Law in western Pennsylvania since 1995. Senior Care Resources has been helping people apply for Medicaid (called Medical Assistance in Pennsylvania) for nursing home care since 2007. Between the two entities, we have processed over 10,000 Medicaid applications for long-term care in Pennsylvania.

This publication was designed to be a guide for our clients. Medicaid is a fantastic program that will cover the costs of any person residing in a nursing home and is found eligible. But eligibility can be a very deceiving and tricky topic. There are many traps for the unwary. We have found that people need to understand these rules as best they can. These are not difficult rules, but there are so many that it can be extremely difficult to comprehend everything. We can tell people what the rules are but remembering all of them is not possible for most.

This publication is intended to help you understand some of what the rules are and what the process entails. It is not a substitute for having an elder law attorney or an experienced guide like those who work at Senior Care Resources. As stated in our Disclaimer section, we are not offering legal advice through this publication. There is no attorney-client privilege unless you are a paid client of Zacharia Brown PC.

In this publication, we discuss the rules around your Income, Assets, the Application Process, some traps and difficulties to be aware of, and strategies used to protect you from these traps. Applying for Medicaid can be a daunting task. While we help thousands of people through this process, for many it is more beneficial for our clients to understand better how the system works. If you are in need of legal representation because you wish to cure prior gifts and/or preserve some of your loved one's life savings, contact our founders at the Elder Law firm of Zacharia Brown.

There is really nothing available on the Internet or elsewhere that will show you how things work and what you really need to know. Nothing that is, other than this book.



PittsburghElderLaw.com



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Senior Care Resources, LLC, 4500 Walnut Street, McKeesport, PA 15132

Tel: (412) 751-6101 – info@seniorcareres.com

The Big Picture

You are applying for a benefits program created by Congress and run by the Commonwealth of Pennsylvania. There are many laws, federal and state. In addition, there are many regulations and policies that are in existence. This introductory section was intended to give you a big-picture view of things before we get into any details.

You must meet the eligibility requirements at the time of application.

In order to be eligible, your assets must be at a certain level. If they are not, you will be ineligible, period. It might take 2 - 3 months before you get that denial. At that point, you might owe the nursing home \$10,000 or more for each month that has passed. If three months have passed, the bill might be \$30,000 or more. Using the average cost of nursing home care in Pennsylvania in 2022, that bill would be more than \$43,000! Too many people apply way too early without a plan. If you want to have a successful application with limited stress, you need to have a plan and that plan must be created by someone with experience.

A Human will decide your case

The decision on your application will be made by a human being. Many of them are new and not all that familiar with the nuances of Medicaid. Some barely know the rules but try their best. Some are not so nice, others are nice. You do not know what type of person you might get and what mood they are in the day your application hits their desk. Their job is to make sure you are eligible. In doing so, they need to look for things that make you ineligible. It is not an easy process. Too many people think "It's Medicaid, how tough can it be?" Then they find out.

Beware of the Five-Year Look-back

The Five-year Look-back applies to transfers for less than fair market value, not just gifts. Selling something at a discount to another counts as a violation of the five-year look-back, and so do contributions to charities. Giving money to a family member in need also violates it. The intention of the transfer makes no difference. The question is, was a transfer to another made, and did the person making the transfer receive back fair market value?

When the five-year look-back is violated, the State issues a penalty period. They will not provide Medicaid benefits for a time. That time is currently 1 day of non-payment for every \$482.50 transferred without fair market value received. The worst part is that the penalty does not start until the applicant is at or under resources. This means that the applicant would not have the money to pay it back and cure the penalty. What then happens is that the nursing home does not get paid, and they end up suing. They are very expensive places to run, and they cannot provide charitable care because someone gave money or an asset to a loved one. If family members cannot give back what was given to them, they can be sued.

Five-year look-back violations can be cured by elder law attorneys using the excess money of the applicant if they are involved early in the process before all of the money has been spent down.

While your application is pending you must pay your income to the facility

While you may not be billed, you must understand that if it takes three months and you are found eligible beginning on the date 3 months prior, Medicaid will make their payment to the facility, but you also have an obligation to pay your monthly income to them after making payments for medical insurance. Do not spend it elsewhere while the application is pending.

To Be Successful, you need to make a plan early on

Sit down with an experienced individual, preferably an elder law attorney, and go over everything in advance. Make a plan for how you are going to manage your assets, achieve spend-down, address five-year lookback issues, and make certain that every conceivable obstacle is addressed. And do not be concerned about what they charge. Their fees are allowable spend-down so, there is no additional cost.

Overview

Medicaid is called **Medical Assistance** in Pennsylvania. It is often referred to as MA (emm aee). Medicaid is a federal program that is administered by the states. It came about at the same time Medicare did in 1965. The federal government agency responsible for Medicaid is called CMS, the Centers for Medicare and Medicaid Services. It used to be called the Health Care Financing Administration (HCFA). Every state is required to provide and maintain a plan called the State Plan that describes how they will utilize Medicaid dollars. This is due to the fact that much of the money that is used for Medicaid services is provided by the federal government. The state does provide some of its own money, but a large amount is provided by the federal government.

Medicaid is the largest part of almost every state's budget. And because it is so large and represents so much of each state's budget, the states have very tight controls on how the money is paid out.

In Pennsylvania, Medicaid is not available to pay for care in an assisted living facility. Medicaid will pay for care in an assisted living facility for Ohio residents. Here is a quiz question for you. A citizen of Florida comes to be in a Pennsylvania nursing home to be closer to her sister who lives in Pennsylvania. If otherwise eligible, is she: A) Covered by Florida Medicaid; B) Covered by Pennsylvania Medicaid; C) Not Covered at all; or D) Covered by her choice. The correct answer is B. Payment for care in a Pennsylvania nursing home will be covered by Pennsylvania's Medical Assistance program and administered by Pennsylvania's Department of Human Services.



About Medicaid

Medicaid is a federal medical insurance program that came into being in 1965, the same time as Medicare. It is a program that allows the states to create their own coverage plan as long as that plan meets the federal legal requirements. In Pennsylvania, that plan is called Medical Assistance or M.A. for short. We will primarily use the term Medicaid in this publication but when we say Medicaid, it means Medical Assistance in Pa.

Medical Assistance

Medicaid is a massive program. We will only be discussing the medical insurance plan for long-term care. There are many other varieties of Medicaid that we will not be discussing.

Marital Status

In Pennsylvania, the current practice is that you are either married or not married. If you are separated from your spouse, you are still considered married for purposes of Medicaid. Even if there is a divorce proceeding going on you are still married.

As you will learn in this publication there are some real benefits to remaining married. We will be referring to the healthier spouse at home as the community spouse. You may see the initials CS. The law provides that the CS may often get a portion of the income of the nursing home spouse. In addition, the CS is permitted to keep a great deal of the assets, sometimes all of the assets, and that would not necessarily be the case in a divorce.

So, when determining your initial status, remember you are either single or you are married.

The Rules Regarding Assets



In Medicaid lingo, your assets are called Resources. This booklet will use the two interchangeably.

Also, there are different rules for a single Medicaid applicant versus a married applicant.

Joint Ownership

At the outset, you need to understand that if an account is owned one-half by the applicant and one-half by another person, that account will be treated as being 100% owned by the Medicaid applicant. This is true for all joint accounts. Occasionally there is a situation where the account is truly owned by the other person but in the name of the applicant too for convenience's sake. If you can prove that the amount in the account or any percentage of it is truly owned by another person, it will not be considered 100% owned by the applicant.

For married couples, it makes no difference. For married couples, except for an IRA owned by the non-applying spouse, all assets are considered in the application no matter if it is in the name of either spouse individually or jointly. They count it at 100%.

Countable and Non-Countable Assets

The rules for assets limit the amount an applicant can have. Before going into that, we need to know what assets are included in calculating that limit and what assets are excluded, or non-countable.

Non-Countable Assets

Non-Countable or exempt assets that are not considered when applying for Medicaid include:

- The Home of the applicant, his or her primary residence
- One vehicle
- Term and group life insurance
- Whole Life insurance if the total face value of all life insurance is \$1500 or less regardless of cash value
- Fixtures and furnishings in the home
- \$2,400 in financial assets like bank accounts or investment accounts. This amount increases to \$8,000 for some people if their monthly gross income is less than \$2,523 a month in 2022.

Countable Assets are everything else

- Any real estate that is not the applicant's primary home

- All vehicles after the first one
- Financial assets more than \$2,400 or \$8,000 depending
- Life insurance with cash value provided that the face value of all life insurance owned is greater than \$1,500. Interestingly, \$1,000 of the total cash value is deducted from this

His/Hers/Theirs

Almost everyone that is new to Medicaid there is a distinction based upon whose name an asset might be in. If there is, for example, a bank account in the name of the community spouse only, the entire amount is considered part of those countable assets. If an asset is owned jointly with another person, once again, the entire amount is still considered for purposes of determining eligibility.

The Single Applicant

A single applicant is permitted to keep either \$2,400 or \$8,000 as referenced above. If a single applicant's gross monthly income is greater than \$2,523, the figure for the year 2022, then that person is permitted to keep \$2,400 in financial assets as well as their home and one vehicle. If their gross monthly income is less than that amount, then that applicant is permitted to keep \$8,000 in financial assets. This same figure, \$2,523, is used as a threshold for those who wish to get Medicaid coverage for care in their home. If your gross monthly income is less than that amount, you may be eligible for Medicaid home care coverage. If your income is greater than that amount, then you are simply not eligible. While this booklet is not intended to get into the subject of Medicaid home care coverage, please understand that it is not coverage provided 24 hours a day seven days a week. The two main programs for home care coverage are called the waiver program and the LIFE program.

While we will be discussing this further in his publication, if you are a single applicant and own a home, and that home is in your name alone, it will be an issue that you will need to address. When on Medicaid, almost all of your monthly income except for \$45 per month will go to the nursing home. Clearly, that is not enough to maintain a home. Sometimes the home can be transferred to a child of the applicant who has lived with that applicant for two years or more. Sometimes there are other exceptions where the home may be transferred to another. Speak with an elder law attorney about these issues if you wish to preserve that home.

The Married Couple

This is a very complicated area, and I will touch upon the essential items. With a married couple, there are special provisions to protect the Community Spouse (CS). On the date of admission to the nursing home, called the snapshot date, there is a snapshot taken of the values of all countable assets. These include everything mentioned above but also exclude two additional items: any IRA or 401k owned by the CS and an amount called the Community Spouse Resource Allowance (CSRA). The CSRA totals all those countable assets valued as of the snapshot date and divides them in half. The CS is permitted to

keep one half. However, there is a maximum amount of CSRA and a minimum amount allowed as well. In 2022, the maximum CSRA is \$137,400. The minimum amount of CSRA is \$27,480.00.

The law was designed to help make certain that the Community Spouse (CS) has enough income and assets to continue to live their life. This topic is very complicated and requires a one-on-one discussion with an expert elder law attorney.

Snapshot Date – Form PA1572

When a married couple is applying for Medicaid for one of the spouses, there is a form to be filled out called form PA 1572. That form asks for the value of all assets owned by the married couple, valued as of the date of admission to the nursing home. The date of admission to the nursing home is called the snapshot date. What was everything worth on that date? From those values, calculate the value of the countable assets and cut it in half. One-half is the amount that the community spouse can keep, it has a maximum of \$137,400 here in 2022. It also has a minimum amount of \$27,485. So, for example, if there are \$200,000 in countable assets, the community spouse can keep \$100,000. The nursing home spouse will be able to keep either \$2,400 or \$8,000, the balance must be spent.

Example 1

Mary is in a nursing home. She has a home, a car, and \$50,000 in her bank account. She has just begun private pay status and the daily rate is \$400 a day. If she is permitted to keep \$2,400, in four months she will have accrued a bill of nearly \$48,000 which would be her spend-down. Let's say it is now four months later. Mary can purchase a burial reserve to pay for her funeral costs at this time. It is essentially a life insurance policy to be used solely for her funeral and burial bills. If she decides that she needs to pay taxes that she owes, or pay off a car or credit card bills, she cannot. They are not treated retroactively, only medical and nursing home bills and the burial reserves are allowed, retroactive spend-down.

What she should have done is pay those taxes and bills and other items of need to her before the entire 4 months elapsed. If, for example, Mary paid \$12,000 for taxes, or debts, or other expenses in the first month, she would be eligible after three months since she reduced her spend-down early. The hiring of elder law attorneys also fits into this allowed spend-down matter. If you hire one early on, that will reduce your spend-down and allow you to have expert assistance and guidance.

Example 2

John and Mary are married. Mary is in the nursing home. When she went in, they owned a home, a car, \$200,000 in bank and investment accounts and John had an IRA worth \$150,000. John is permitted to keep his IRA plus \$100,000 in assets. Mary can keep \$2,400 and their spend-down is \$97,600. If their financial assets were not \$200,000 but \$400,000, John would be able to keep \$137,400 of that plus his IRA. Mary could keep \$2,400 and their spend-down would be \$260,200. What if John and Mary did not

have \$200,000 in countable assets but only \$40,000? John would keep his IRA and \$27,480. Mary would keep \$2,400 and their spend-down would be only \$10,120.

Except for the IRA owned by the CS, whether an asset is in the name of the nursing home spouse, or the community spouse does not matter. It is all treated as one lump sum to be calculated accordingly. Keep in mind also that an IRA owned by the nursing home spouse is a countable asset. Only an IRA or 401k owned by the CS is exempt.

Care in Estate Planning

Consider what might happen if John, the CS, died before Mary and had an old estate plan leaving everything to Mary. When John passed away, everything would then go to Mary, and she would be removed from Medicaid until she had spent down. This can be avoided with the assistance of an Elder Law attorney who can set up the estate to minimize or avoid this consequence. An elder law-centered estate plan which makes certain that the nursing home spouse does not receive all of the assets if the community spouse dies first is essential. An elder law attorney can set up a special needs trust for that nursing home spouse's work and simply arrange for estate planning where the assets are owned by the community spouse or transferred instead to the children. There is a great deal on this topic that cannot be covered in this booklet. You are strongly urged to seek the advice and guidance of an elder law attorney. For more information, contact the law firm of [Zacharia Brown](#).

Prior Gifts and Transfers – The 5-Year Look-back

A **critical** area for you to understand is a topic called “**The 5-Year Look-back (SYLB)**.”

This is without a doubt the most misunderstood, and the least understood area of Medicaid. You have probably heard people say: “They will take your home”, “They will take all your money”, “They will take everything you have!” To be honest, some very tragic things have happened to people. I have heard the stories myself, many times. Therefore, it is very important you understand the nature of this law and how it works. We have recently put out an eight-page publication on this topic that you can obtain from our website.

The five-year look-back is nothing more than an audit period. As you will learn from this book, as part of the application you must provide a financial history of your assets. In addition, the caseworkers at DHS will also have access to your tax returns. What they are looking for are violations of the law that states, in effect, that you cannot transfer anything to another person for less than fair market value. Notice I did not use the word gift. Gifts fall into the definition of transfers. And transfers have no intent, a transfer is a transfer without intention.

For example, let’s say somebody sold their \$30,000 car to another person for \$20,000. If that happened in the five years prior to applying for Medicaid, it would be a violation of the five-year look-back.

The caseworker is reviewing your financial history as part of the Medicaid application. Over the prior five years, they are looking for transfers. They are looking for checks written out to other people and checks written out to cash in larger amounts, typically over \$500. They are looking at the deed registries to see if any real estate was transferred as well. They are, in essence, looking for any possibility that the applicant transferred assets to another for less than fair market value.

When this occurs, when the applicant is otherwise eligible, which means has financial assets of less than either \$2,400 or \$8,000, they will assess a penalty. So, the caseworker totals all of the transfers that he or she finds and takes the total and divides that by the average cost of nursing home care in the State. In Pennsylvania, the average is currently \$482.50 per day. So, if the total amount transferred for less than fair market value came out to say \$30,000, that would be effectively a two-month penalty. And when the applicant only has a couple of thousand dollars, who pays the nursing home bill? This is when the nursing home sues the family members, especially those who are gifted that money and did not give it back. If you Google the phrase filial responsibility, you will learn much more.

*** Now here is the good news**, and something that the vast majority of people do not know. An elder law attorney can take a portion of the remaining financial assets that the applicant has before spending down to that low level and convert those assets into a stream of income that can be used to pay through the penalty. This may seem confusing to you now. You might want to take a look at our other publication, or more importantly, contact [Zacharia Brown](#). At ZB we have been doing this for nearly 30 years. What is important is that you visit with us well before your loved one has spent down all of their assets. We can

cure the gifting penalty and you get to keep the amount you are gifted as well. The nursing home gets paid as well and, in effect, everyone wins.

As a last note, please do not think that you can hide anything or that the caseworker will not ask questions, or that the caseworkers do not look in great detail. I can assure you they do. Be honest, be upfront, and let us help you fix that problem so that everyone wins.

A True Story

Many years ago, a new client came to my office and explained that her mom was in a nursing home and only had \$75,000 remaining in her bank account. One year prior to her nursing home admission, mom had given each of her three children \$10,000. The average cost of a nursing home at that time was about \$10,000 as well. This client had experience with Medicaid and knew that she had a real problem coming up. She knew that mom's \$75,000 would not last long, that she would be applying for Medicaid, and that they would find that \$30,000 transfer. She also knew it was a great likelihood that she and her siblings would all be sued. So, we analyzed the situation and came up with the following plan:

I advised her to transfer an additional \$20,000, I had her put some money into a prepaid funeral, she paid our bill, and at the end of that, there was \$35,000 remaining. So, the total penalty period was expected to be five months for a total gifted amount of \$50,000 at that time. That \$35,000 was converted into a stream of income paying \$7,000 a month for five months. Mom's income was \$2,000 a month, and the nursing home bill was about \$9,300 a month. So, when we got that five-month penalty, mom's income was nearly enough to pay the bill every month for that five-month penalty. The children got to keep the money that was gifted to them, in fact, they got even more. The nursing home was fully paid for that five-month penalty period and mom went directly onto Medicaid after the penalty expired. Everyone won!

Please take a look at our other publication for more information about this or contact [Zacharia Brown](#).

Income and Medicaid



From the date the application is submitted and until the date a decision is rendered, could take anywhere between 2 months and 6 months. While that decision is pending, the nursing facility will mark your case status as MA Pending (MA = Medical Assistance, the Pennsylvania name for Medicaid). While the bill will continue to mount, and perhaps make you uneasy because of the large balance, payment will not be demanded. They know that you have applied for Medicaid. Once Medicaid eligibility is determined, the bill will be adjusted since Medicaid will have made the payment. But not until then.

What is most important for you to understand is that during that time period, if you are determined to have been eligible for Medicaid, you must make your patient pay liability amount. We call it PPL. PPL for a single applicant is determined this way:

1. Take the applicant's gross monthly income from social security, pensions, annuities, etc. Do not include interest and dividends from investments as those will likely be spent down to achieve asset or resource eligibility.
2. Subtract the cost of all medical insurance costs on a monthly basis.
3. Then subtract \$45 which is called a personal needs allowance or PNA.

This PNA is the amount that the applicant has each month to purchase things he or she needs. The balance must be paid to the nursing home.

Too many people take this monthly income and use it for other items while Medicaid is pending. They are paying the maintenance and utilities on the home and doing a variety of normal, everyday payment activities. They are usually unaware that they have a monthly obligation to the nursing home. This is why the home, for a single applicant, can be a real problem.

Be aware of this private payment obligation.

Income for Married Couples

The income of the Community Spouse, the one not in the nursing home, is entirely his or hers. There is a concept called the Name on the Check Rule. If the check is payable to the CS, it is his or hers. If payable to the nursing home spouse, it must be factored into the PPL obligation referenced above. The rules for a nursing home spouse are the same as for a single person. However, when the spouse at home, the CS, has income that does not meet a certain threshold, then the CS is entitled to take more of the income of the nursing home spouse to make up that shortfall. The term is MMNA, monthly maintenance needs allowance. MMNA is a calculation that is made that allows the CS to keep some of the income of the nursing home spouse when the income of the CS is less than his or her MMNA.

MMNA Calculation

This is a very convoluted calculation and should never be done by anyone who does not completely understand it. With that warning in place, here it is.

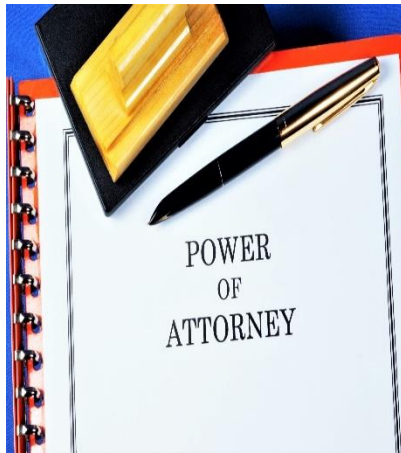
1. Begin with the state minimum amount, the minimum monthly maintenance needs allowance. In 2022 that amount is \$2,288.75.
2. Total the monthly expenses the CS has for real estate taxes, insurance, common fees, rent, and utilities, all on a monthly basis.
3. Subtract from those monthly expenses calculation a figure called the shelter standard, \$654 in 2022. The result is called excess shelters.
4. Add excess shelters to the minimum MMNA, this is the MMNA of the CS.
5. Subtract from this MMNA the monthly income of the CS.
6. Also subtract the IRA distributions that the CS had last year as well as the value the CS could get if he or she invested his or her CSRA and received a 1.5% return.
7. The difference between the MMNA and these income calculations is the amount of monthly income the CS can get from the nursing home spouse.

This is a calculation best left to an expert such as an Elder Law attorney. Beware, from my experience, the caseworkers who do this calculation as part of their job get it wrong very, very often.

Preparation and Planning

As soon as your loved one is off insurance coverage, they will be considered long-term in the facility and have funds available, you must plan.

Power of Attorney



If you do not have a power of attorney for your loved one, get one immediately. There is nothing more important than having this document. Without it you can get nothing done and must resort to the courts for guardianship.

Have a Plan



Prioritize Spend-down

Review all of your loved one's financial history.

- Are there any possible prior transfers that need to be cured?
- Are there unpaid taxes, debts, or expenses that must be paid?
- How long will it take to implement the plan? Make sure there are sufficient funds to pay the nursing home.
- There are ways to save assets and the home, this is the province of an elder law attorney.

You may need to retrain your brain for this. You are in spend-down mode. Saving money will not necessarily be of benefit to you. It may be better to pay \$600 to a bank to print bank statements for you rather than spend two more days on the nursing home and spend two days of your own trying to locate and organize historical statements.



Plan for the Home

If the applicant is single and owns a home there will be effectively no monthly income available to pay for the taxes, insurance, utilities, and maintenance of that home. You need to make sure that you have a plan for it. Sometimes the plan is simply to sell it. Other times there is the ability to give that home to a child of the applicant who has made it their home as well for at least two prior years. There are other options as well. A good elder law attorney can work miracles in this area. Be forewarned, that if the applicant owns that home and the children decide to pay all of the taxes, insurance, utilities, and maintenance believing they will ultimately inherit the home, that may not happen. There is a program called Estate Recovery which requires the probate estate of any Medicaid recipient to first repay the State for any Medicaid benefits it paid out. You will want to avoid that as much as you can.

An Overview of the Process

Medicaid can be applied for either on paper or online. There is a large set of documentation required for the application which is the subject of the next section.

Who manages the Applications?



In Pennsylvania, the Department of Human Services (DHS) is the agency that handles and administers Medicaid applications. DHS was formerly known as the Department of Public Welfare or DPW. Within DHS, the department is called the County Assistance Office or CAO. Many think that the County oversees Medicaid applications because of this name. But each county has a CAO, and the CAO is an entity of the State DHS, not a department of the County. Within the CAO the group that handles Medicaid applications for long-term care is called IRED, the Institution Related Eligibility District. A caseworker from IRED gets assigned your case. The title of that caseworker is usually an IMCW, income maintenance case worker. This person will review your application and ultimately decide if you are eligible, not eligible, or eligible with a penalty due to transfers for less than fair market value. The job of an IMCW is difficult and the rules, as I have hopefully shown you, are quite complex. Many of these people are new and many do not have the expertise or experience to handle these matters. Any case for a married couple should be reviewed first by an expert, preferably an elder law attorney. You may find that you got denied when you should not have. You may find that you were penalized for something that should not be penalized.

This booklet is only a small overview of the system. There is much that is not discussed here. For example, if a wife is in a nursing home and her husband is a contractor who owns 2 trucks, a backhoe, and other equipment, is he required to sell all of his business equipment to get Medicaid for his wife? No, there is an exception for that. Please just understand that unless the application is simple, a person of limited assets, limited income, and no history of giving anyone anything, an elder law attorney might be necessary.

The Pending Letter

After the case is submitted, usually within 30 days, you can expect a pending letter. A pending letter is from the IMCW asking for more information or clarification on certain items. They will often ask for an explanation of certain checks that were written, or of the source of certain deposits. The caseworkers have access not only to the information that you provided but also have access to your tax history via a

system they call IVS, Income Verification System. Please do not try to hide or ignore certain items hoping that the case worker will miss them. Chances are they will not. Between your application documentation and IVS, they have access to a wide variety of data.

Initial Determination

After one or two pending letters, an initial determination is made. In the real world, there is often a lot of back and forth after that first pending letter, but in the end, the caseworker must issue a determination on a form called a Pa-162. The determination can be one of three types:

1. Denied
2. Eligible
3. Eligible with a penalty

The two primary reasons for the denial are: a) DNR, Did not respond with the requested information, or b) Over Resources. By simply appealing the denial within 30 days of issuance you can keep the case alive. It is critical that you do so. DNRs and Over Resources denials can almost always be worked out. DNRs by providing the requested information and Over Resources by showing that the amounts had been spent down.

Appeals

Any denial can be appealed to the Pennsylvania Bureau of Hearings and Appeals (BHA). BHA is a department within DHS that hears and decides appeals. You have 30 days to file an appeal after a decision. These are mainly telephone hearings and not usually protracted nor truly litigious. If a caseworker denies your case for DNR, you will simply speak with the judge and arrange a timeframe where you agree to provide the information. The judge will require the caseworker to be exact in what they request, and you will have to agree to provide it. If there is something that cannot be provided, you should discuss it at that hearing with the judge and explain why you cannot obtain certain items.

Another typical denial is for being over resources. The nursing home tells the Department of Human Services caseworker what its MA Need Date is. This is the first date for which the nursing home provided services but has not been paid. The caseworker will review the assets (called resources) as of that day. If the applicant had more than the allowable \$2,400/\$8,000 amount they will declare the applicant as being over resources and deny the application.

Retroactive Spend-down

At this point, being typically several months after the MA Need Date, the applicant can spend the over resources amount on medical bills, nursing home bills, or create or add to a prepaid funeral policy also

known as the irrevocable burial reserve or IBR. The applicant cannot spend the money now on anything else. Only those three items may be spent after the fact and be treated retroactively as spend-down.

Example

Bonnie is an applicant for Medicaid. Her MA Need Date is July 1. On October 1 she gets a denial stating that she is over resources by \$5,000. She decides to spend that amount on her income taxes, and she pays the US Treasury \$5,000 on October 1. She has not spent down. She must make that payment towards the nursing home or towards her IBR. Only those are retroactively applied as spend-down. If she spends it on something else, she still must make the payment to the facility or that burial. If she does not, and the case is denied and the 30-day appeal period expires, she must reapply and pay the nursing home their bill for the three (3) months that are outstanding. That can be a substantial amount, and she only has a small number of assets to pay for anything. Do you see the danger here? This is where the lawsuits come in. I hope things like this, which occur constantly, are enough to help you understand the grave importance of having experienced persons assist with your application.

Further Appeals

Once the BHA is done, your only other source for appeal is to the Commonwealth of Pennsylvania's Commonwealth Court. This requires an attorney.

Be aware

Be aware that if you lose your appeal and let the case die, you may be on the hook for a very large nursing home bill. Do not let that happen. If the denial was for being over resources, make the payment amount to the nursing home and let them move the MA Need Date forward. If it was for did not respond, find out what they want and supply it. If you get a difficult caseworker, go to the appeal. They are typically telephone hearings and not in person. The Judge will make the caseworker state on the record exactly what it is that is needed to complete the application.

Documentation and Proof of Eligibility

In order to be eligible, you need to provide proof that:

1. **Citizenship.** You are a US Citizen or lawfully admitted alien

Birth Certificate, Social Security Card, Medicare Card



2. **Income** Your income is not enough each month to pay for the nursing home on your own.

Social Security Statement, Pension Statement, Annuity Statement, etc.

3. **Current Asset Levels** Your Assets are at or below the permitted level

- Bank Accounts
- Investment Accounts
- CDs, Annuities, IRAs
- Life Insurance
- Vehicle Titles
- Real Estate Deeds

4. **No Transfers** You have not made any disallowed transfers for less than fair market value in the past 5 years

Historical Statements and documentation for:

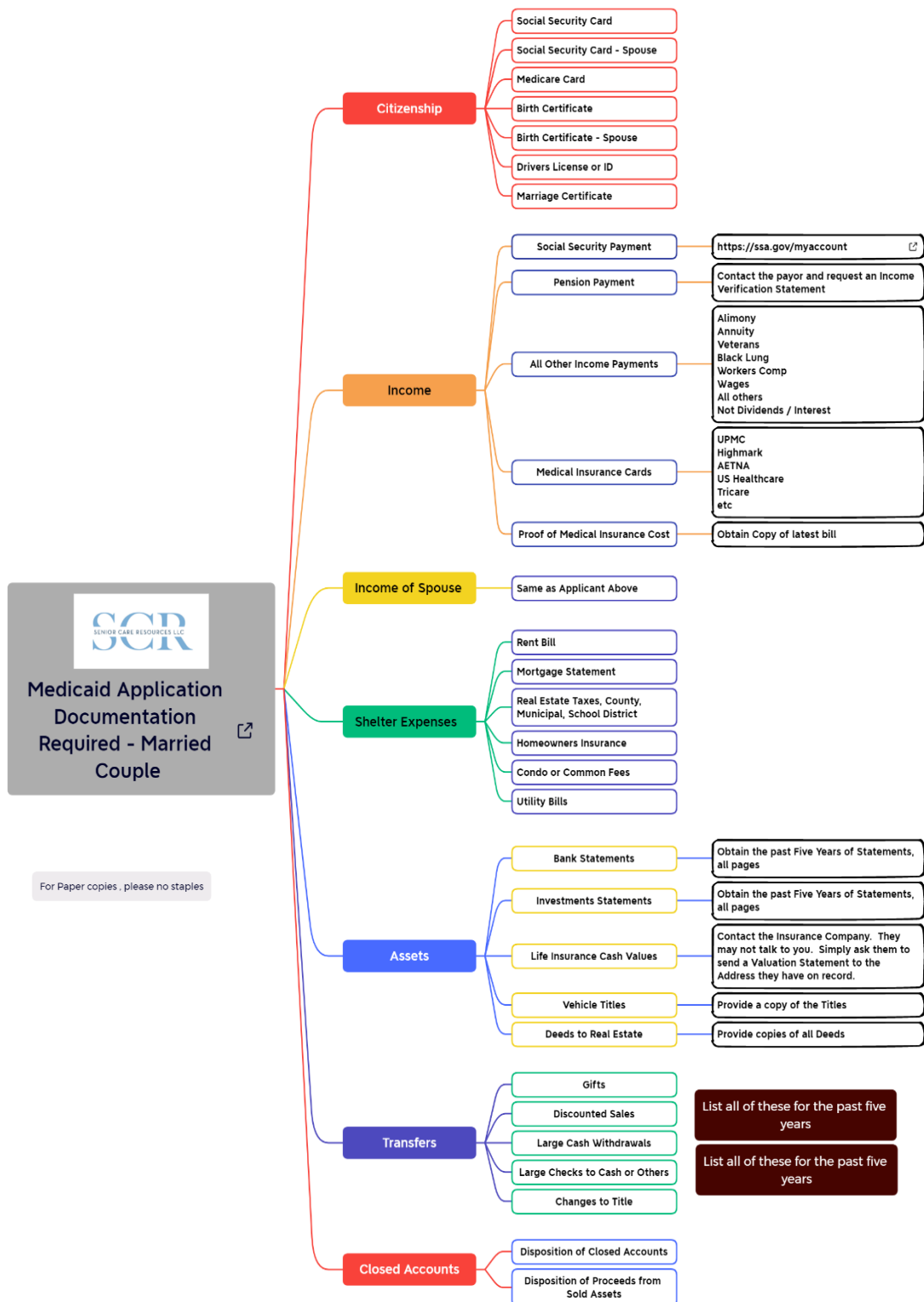
- Bank Accounts
- Investment Accounts
- CDs, Annuities, IRAs
- Life Insurance
- Vehicle Titles
- Real Estate Deeds

5. **Closed Accounts** You must report any and all closed accounts and what you did with the balance at closing.

Mind Map – Documentation for a Single Person



Mind Map – Documentation for a Married Person



The Documentation Checklist - Single

You will need to provide the following documentation copies. Not originals, just copies. The preference is that you provide these electronically in pdf format. If you provide them on paper, please **do not staple** the pages together.

<u>Done?</u>	<u>Description</u>
<input type="checkbox"/>	Birth, baptism certificate or PA ID card
<input type="checkbox"/>	Social Security Card
<input type="checkbox"/>	Medicare card (front & back)
<input type="checkbox"/>	Health insurance card (front & back)
<input type="checkbox"/>	Income verification letter from Social Security
<input type="checkbox"/>	Income verification letter or check stub from pension showing gross & net
<input type="checkbox"/>	Proof of health insurance premiums
<input type="checkbox"/>	Bank Accounts, Checking and Savings *
<input type="checkbox"/>	CDs, Annuities, Xmas Club, etc.*
<input type="checkbox"/>	Investment Accounts *
<input type="checkbox"/>	Stocks and Bonds *
<input type="checkbox"/>	Life Insurance Values
<input type="checkbox"/>	Title or Registration of Vehicles
<input type="checkbox"/>	Deeds to any Real Estate
<input type="checkbox"/>	Prepaid Funerals or Burial Reserves
<input type="checkbox"/>	Title to Burial Plots
<input type="checkbox"/>	Power of Attorney or Guardianship Papers

* These items require all copies for the past two years plus January and June for the three years prior to that. If you are able to obtain all five years, please do so.

The Documentation Checklist - Married

You will need to provide the following documentation copies. Not originals, just copies. The preference is that you provide these electronically in pdf format. If you provide them on paper, please **do not** staple the pages together.

Applicant Spouse Description

<input type="checkbox"/>	<input type="checkbox"/>	Birth, baptism certificate or PA ID card
<input type="checkbox"/>	<input type="checkbox"/>	Marriage Certificate / Divorce Decree
<input type="checkbox"/>	<input type="checkbox"/>	Social Security Card
<input type="checkbox"/>	<input type="checkbox"/>	Medicare card (front & back)
<input type="checkbox"/>	<input type="checkbox"/>	Health insurance card (front & back)
<input type="checkbox"/>	<input type="checkbox"/>	Income verification letter from Social Security
<input type="checkbox"/>	<input type="checkbox"/>	Income verification letter or check stub from pension showing gross & net
<input type="checkbox"/>	<input type="checkbox"/>	Proof of health insurance premiums
<input type="checkbox"/>	<input type="checkbox"/>	Bank Accounts, Checking and Savings *
<input type="checkbox"/>	<input type="checkbox"/>	CDs, Annuities, Xmas Club, etc.*
<input type="checkbox"/>	<input type="checkbox"/>	Investment Accounts *
<input type="checkbox"/>	<input type="checkbox"/>	Stocks and Bonds *
<input type="checkbox"/>	<input type="checkbox"/>	Life Insurance Values
<input type="checkbox"/>	<input type="checkbox"/>	Title or Registration of Vehicles
<input type="checkbox"/>	<input type="checkbox"/>	Deeds to any Real Estate
<input type="checkbox"/>	<input type="checkbox"/>	Prepaid Funerals or Burial Reserves
<input type="checkbox"/>	<input type="checkbox"/>	Title to Burial Plots
<input type="checkbox"/>	---	Power of Attorney or Guardianship Papers
---	<input type="checkbox"/>	One Month of utility bills
---	<input type="checkbox"/>	Real Estate Taxes, Mortgage, Rent
---	<input type="checkbox"/>	Homeowners Insurance

* These items require all copies for the past two years plus January and June for the three years prior to that. If you are able to obtain all five years, please do so.

Where to obtain documentation

Social Security

www.ssa.gov/myaccount

This link will allow you to set up an account with the Social Security Administration and obtain copies of cards, benefits statements, etc.

Birth Certificates

Birth and death certificates can be ordered online by a company called vitalchek.com.

Marriage Certificate / Divorce Decree

These are normally easy to obtain from the County where the marriage took place or where the divorce decree was rendered.

Bank Statements

These can be obtained from your bank. Most banks have some recent history online, usually a year or two that you can get from an online account. Others have a dedicated 800 line you can call to obtain statements. Some charge a fee, others do not. If you are in spend-down mode, it might make sense to go ahead and pay the fee since this will help achieve the spend-down goal and get benefits faster.

Investment Account Statements

These can be obtained from your investment advisor. Most will be able to provide you with the history that you need.

Life Insurance Statements

These can be tricky. You need to obtain a valuation statement that shows the current cash value, face value, and death benefit. Remember that neither term nor group life insurance counts so there is no need to obtain anything from those companies unless you need to clarify that the policy has no cash value (i.e. is term or group).

Some companies allow you to obtain the information online. Others will not. For those, we have found that if you call and ask the company to *send the valuation statement to the address of record*, they will simply send exactly what you need to the address they have on file for the applicant. This can be much faster than having to send in a power of attorney, and wait for them to receive and approve that before speaking with you.

Vehicle Registration

You will need a copy of the registration and/or title for each motor vehicle owned by the applicant. Only one is exempt, the one with the highest value. For valuation purposes, Kelley Blue Book can be used.

Deeds to Real Estate

Most counties across the country now have methods for obtaining copies of deeds online. In Pennsylvania, the office that manages these is called the Recorder of Deeds. In Allegheny County, it is called the Department of Real Estate. If you cannot locate an online service and cannot locate a copy of the deed, call the Records Office and ask them to mail you one. They will normally do so for a small charge.

Closed Accounts

The caseworkers are very thorough when reviewing your financial history. As part of their review, they use something called IVS, Income Verification System. When you apply for Medicaid, the caseworker will check your tax history for interest and dividends and other items that appear in your tax history. If those items are not shown, you will be asked what happened to the account. They will also want to know what happened with the balance of the account.

If your response is "I don't know" or is a 'believable' story without proof, you will get a denial for not providing information. You need to find out whatever you can. If your case is denied, you will more than likely have a substantial bill to the nursing home that you will have to pay. If you do not have the money, family members may be forced to pay the bill. You are better off showing the amount that was in the account and if you do not know where the proceeds went, but at least know the last amount, that will be added on to a gift or transfer ledger which will, in the end, generate a penalty. But a penalty will run for a set time period and when it ends, full Medicaid can begin. It is almost always better to have a penalty than an outright denial.

Gifts and Transfers



You may have heard this rule before. But few people understand it. Almost no one understands the Five-year Look-back (5YLB). You may have heard horror stories about this rule set. Here is the truth.

The 5YLB is a set of federal laws for Medicaid that effectively states that if any applicant for Medicaid for long term care transfers their assets to another for less than fair market value, that applicant should not get Medicaid right away but should be penalized for a period. The penalty is effectively nonpayment of Medicaid for a period calculated by the amount transferred for less than fair market value that the applicant would have been able to use to pay for his or her own care

had they not transferred it for less than fair market value.

Notice the lack of the word gift. It does not say gift. It says transfer for less than fair market value. So, gifts are included in the definition, but so are other items. Neither intention nor reason matters. If an applicant sells their \$200,000 home to a child for \$150,000, that applicant has made a \$50,000 transfer for less than fair market value. If an applicant gave his or her grandchild, say \$10,000 for a wedding present, that also is a transfer for less than fair market value. These would both be considered transfers and penalized.

The 5YLB is an audit period. Any such transfers that occurred in the five years prior to applying for Medicaid are counted. They are then aggregated, and totaled and, when the applicant is "otherwise eligible" which means at or below the allowed \$2,400/\$8,000 asset allowance, the penalty is to be imposed. The penalty is non-payment of Medicaid for a number of days calculated by taking the total and dividing it by the average cost of a nursing home in the state the person is located. In Pennsylvania, here in 2022, that amount is \$482.50. So, a transfer for less than the fair market value of \$50,000 would be 103 days ($\$50,000 / \482.50). So, the nursing home has an outstanding balance for these 100 days, who pays? Good question. This is where family members can be sued under a set of laws called Filial Responsibility. This is also the reason the nursing home is so adamant that you disclose your assets. They cannot eject an elderly frail individual. When people say they lose their home, etc., it is because of this 5YLB. We have a booklet available on the 5YLB that goes into greater detail than we can here.

The 5YLB can be cured and resolved without giving anything back. Available spend-down funds of the applicant can be used and converted into a financial income stream to cure the penalty caused by prior transfers. This is the realm of the elder law attorney. Transfers can be cured despite the fact that the applicant is in the home right now. What you need to do is plan early. Planning is the entire theme of

this booklet. Go through the financial history and anything that looks like it might be a transfer should be disclosed to your Medicaid expert (SCR caseworker).

Estate Recovery

Be aware of this program. Estate Recovery is a federal law that mandates that each state have a program to seek reimbursement of the amount they paid out in Medicaid dollars from the estate of the deceased Medicaid recipient. For example, in Pennsylvania, the state will not count your house if you are applying for Medicaid. Some children then believe that they can keep the house. They pay the taxes, utilities, and insurance on the home to maintain it while their parent or loved one is alive and in the nursing home. They wrongfully believe that when the loved one passes, they will be able to keep the home. Upon the death of a person on Medicaid, the state has a priority position to get paid back for the value of Medicaid services provided. In Pennsylvania that recovery is currently limited to what goes through the Medicaid recipient's Will. There are usually only two assets, any term life insurance that the person had and failed to name a beneficiary, or the named beneficiary is deceased, and the home.

People often talk about losing their home to the nursing home or to the state. It is Estate Recovery of which they are speaking. Many people are shocked to find that once their loved one passes away that the state has a large claim against the house. And the state must get paid back first. They will often state, "I was told that Mom could keep her house and still go on Medicaid." That is true. What was not understood was that the State would have a claim against the house unless it was properly planned for. Everyone in Pennsylvania that applies for Medicaid for nursing home care is given a brochure on Estate Recovery. They are required to sign a form acknowledging that they received it. Most do not read it and many that do read it may not fully understand it.

States are not limited to recovering from the probate estate. Many states go after other assets such as trust assets, joint assets, and other assets that pass by other than the Will. A few states, Florida for example, will not permit Estate Recovery to have a claim against a person's home because the home is protected from unsecured creditors by Florida's homestead exemption. Seek out the assistance of an elder law attorney in your state for assistance on this topic as well as all the others.

Transfers Triage

If you answer yes to any of these questions, you may have a 5YLB issue. Please discuss this with your [Senior Care Resources Representative](#) or contact [Zacharia Brown](#) immediately. These are areas that can become a problem with the application under the 5 Year Look-back.

Did the Applicant or Spouse:

1. Gift \$500 or more to any person, particularly family members for any reason whatsoever? This would include money for a wedding, graduation, bail money for jail, helping an out-of-work person, charitable donations, etc.
2. Sell anything to any person for less than the fair market value of the item sold?
3. Make payments of cash to caregivers who helped take care of him or her?
4. Make large cash withdrawals from a bank?
5. Sell any real estate or vehicle and received cash for the sale?

Planning Triage

These are questions designed to help you with saving assets as well as enhancing your spend-down on appropriate items.

Does the Applicant and/or Spouse:

1. Own a home or other Real Estate?
2. Own a business? Including rental units.
3. Have a disabled or blind child?
4. Have a child that lives with him/her/them for more than two years and has lived there for more than two years or more?
5. Have a trust?
6. Have a prepaid funeral account or policy? (Not just a plot)
7. Expecting an inheritance from any person in the near future?
8. Owe any money to the IRS, the State, any other person or entity?
9. Possibly made gifts to other persons that you are not aware of but suspect?

Common Mistakes



1. Application Mistakes

There are many mistakes that people can and do make in applying for Medicaid without experienced guidance. Some of these include:

- Applying before entering a nursing home to see if the person is eligible. You will be denied for a lack of need of Medicaid. The person has to be in a facility and in need of payment for services. There is an exception when you are applying for home care or LIFE Medicaid options. But with these there is a process in place to get the person onto Medicaid and simply awaiting approval first.
- Applying with excess assets. Assets are called Resources in Medicaid lingo. People are often told to apply to "see what happens." There are strictures and a method in place to make certain that the person's assets (or resources) are not more than the allowed amount. Before you will be eligible, you will have to be "spent down".
- Applying and "hoping the case worker will not find" troublesome transactions. The thoroughness of the caseworkers is often underestimated. Their job is to make certain that a person meets the qualification requirements.

2. Not Planning for the Home

Elsewhere in this book, I have made mention of the home problem. People are told that the home is exempt from the eligibility rules of Medicaid if they sign a piece of paper that they intend to return home. Whether the applicant can return home or not in their lifetime does not matter. It is a subjective test and he or she only has to have that intention to return, and the home is then exempt. However, the first problem is that the person will have no money to pay the taxes insurance utilities maintenance and all the other costs that are associated with homeownership. In addition to that, the home will be subject to the estate recovery program. The estate recovery program is a program that when a Medicaid recipient passes away the Department of Human Services has the legal right to request payback for the Medicaid services, they provided from the probate estate of the deceased Medicaid recipient. Since the Medicaid recipient would only have a few thousand dollars in the bank, that is not normally much of an issue. But when the

Medicaid recipient owned a home, and it is in their name alone, or in their name along with the name of a spouse who has already passed away, that home will go through probate and the state can demand the sale of the home and repayment of their bill, at least as much as the estate can pay. Too many times the children will pay for the expenses and maintain the home believing that they will inherit it when their loved one passes away. That may not happen. Please speak with your elder law attorney about this issue.

3. Misjudging the System

Some people believe that Medicaid must be a very easy system to apply for and get benefits from. They think that the people overseeing the applications will be friendly and helpful to them. This is an incorrect assumption. Of course, some of the caseworkers are very nice people, but many are not. It is not an easy system, and the caseworkers are very thorough. Please do not think that they may not find something that is in the history records. Or that they will be haphazard and overlook something. That almost never happens.

4. Applying at the wrong time

Many times, people apply for Medicaid as soon as they get to the nursing home. Occasionally they don't even know it, the nursing home applies on their behalf because the nursing home has to make certain that they get paid. Sometimes the nursing home personnel will tell people to apply for Medicaid, with the hope that they *might* get it. The problem comes in when you go through the entire application process blindly and have too much money. You end up getting a denial that you are over resources by a certain amount. If you get that over-resources notice three months from the date of admission, you might have a nursing home bill of \$30,000 to \$40,000 depending on the cost of the nursing home. At this point, you have an obligation to pay that bill. If you have spent the money on other items such as taxes, utilities, and maintenance on the home, that is not an excuse. You still must pay the amount owed to the nursing home since he did not get Medicaid. This goes back to the need for a plan.

If the nursing home personnel offers to apply for you or to help you apply you must be careful. Does that person understand Medicaid? Many, if not most do not. Senior Care Resources, LLC, the company that publishes this book is in the business of helping people apply for Medicaid. Most of their clients are nursing homes and chains that contract with SCR to help their residents apply for Medicaid. We have handled over 10,000 Medicaid applications and understand the system well. Other facilities hire a person with no knowledge to oversee the process. They are taught what needs to be submitted and how to do it. They have no understanding of the process past that. All they are doing is showing you where to apply what to sign and what to send in. I am sure they mean well, but in my experience, they are simply going through the motions of what to send in with little understanding of the rule of eligibility. This can be costly. If you apply for Medicaid and after 3 months get a denial, you owe that nursing home for that three-month period. If there are other obligations, you may not be able to pay them if you do not have the funds. The nursing home bill comes first. Only medical bills and the cost of purchasing a prepaid funeral fund can be paid first.

Those who hire elder law attorneys are often told that the attorney will cost them money and that their services are free, remember this. There is a limit on how much you can have in the way of assets (called resources by Medicaid). You are required to spend down to that level. Hiring an experienced attorney is part of that spend-down. If you do not hire an attorney to manage the process for you, you will spend that money on the nursing home and then have to go through this on your own. There is no extra cost.

5. Not having a Plan

This is by far the typical overall problem. People apply for Medicaid with no understanding of what the program is, how it works and how they can benefit from it or be harmed by it. Have a plan. What are the countable assets? What is a close approximation of the monthly income payments? Do you have a plan for the home? Have you identified and made all necessary payments of debts, needs and expenses part of your spend-down plan? Do you have a close estimate of the date you will need and be eligible for Medicaid? And do you have a plan to avoid and/or minimize Estate Recovery?

6. Failure to calculate gross income

Income plays a vital role in Medicaid. A difference in income calculation can mean the difference between being able to retain \$8,000 vs \$2,400. It is also an amount that must be paid each month. A typical situation is where an applicant has \$200 a month withheld in income taxes. Four months after applying he finds out that he still owes the nursing home \$800 in income payments because he had income taxes withheld. Make sure you get it right. Look at the source of the income and make sure there are no deductions for income taxes, life insurance, etc.

7. Income Tax Deduction

Being in a nursing home requires a physician's prescription. As such, the amount you pay to the facility is a medical deduction from your income taxes. In order to take advantage of this, you must itemize your deductions.

MAAP - Medicaid Application Assurance Plan

MAAP is a service provided by Zacharia Brown Elder Law. Simply stated, it is a systematic plan that is developed and followed in order to protect the clients of Zacharia Brown, cure past penalties, preserve assets and help to assure a positive eligibility determination.

A Cure for the Problem

There are two cures for violations of the Five-year Look-back:

1. Any transfer made can be cured by giving the transferred amount back to the Applicant.
2. A Medicaid Application Assurance Plan (MAAP).

The first option is straightforward. If the person to whom the transferred amount was given can return it, or the value of it, the transfer penalty can be cured. This is not the best option.

The second option is MAAP. It is what Zacharia Brown does for almost all its clients. With the assistance of our clients, we identify anything that might be considered penalty-causing transfer. Then with that amount and the value of the remaining unspent, spend-down assets, we run the numbers and convert some of the assets into income and the balance that remains is gifted. Here is a good example, and it is a true story.

We were approached by a new client whose parent was in a nursing home. This client was aware of the five-year look-back and informed me that 2 years ago the parent gave her 3 children \$10,000 each. Back when this occurred the penalty was effectively nonpayment of Medicaid benefits for a period of one month for every \$10,000 transferred or gifted away. The parent only had \$75,000 left, and my client knew that her parents would be out of cash shortly and that that \$30,000 that was gifted would cause a 3-month penalty. She explained that she and her siblings were working people and did not have the money to give back to their parent. I ran my analysis and informed her that with the remaining \$75,000, we were going to prepay a funeral for \$15,000, gift an additional \$20,000, and use the balance to increase the parents' income during that penalty period so that the increase in income would pay through the penalty. The penalty period back then was 1 month of non-payment for every \$10,000 transferred (it is \$14,676 in 2022). So, the penalty period was now five months. We implemented that plan, used the remaining assets and recharacterized them as income, and it worked as expected. There was a five-month penalty and the income each month during that five-month penalty was almost enough to pay the monthly nursing home bill in full. A small shortfall was required to obtain Medicaid and that small shortfall was paid to the nursing home at the end of the five months from the additional gifted money of \$20,000. The amount required was only about \$1,000. Our client was overjoyed.

A MAAP is not just for curing prior transfers and gifts. A MAAP is also to protect other assets as well. As a rule of thumb, the use of a MAAP plan will preserve 50% of all of the assets owned by the Applicant.

Implementation of MAAP

The Key to this plan is to begin as soon as you know your loved one will be long term in the facility and before they have spent down all their assets. Under most plans, certain assets are converted to income to cover the cost of the penalty. By using this system, Elder Law attorneys can help you:

1. Cure prior transfers and Have funds available to:
2. Protect against unknown transfers.
3. Have a family fund to help enhance the life of the nursing home resident; and
4. Help preserve the life savings of the nursing home resident.

The essence of MAAP is that our staff will help to vet the application before it is submitted. We will go through the application as best we can and look for potential problems. By doing this, we can identify the problems early on and either address them or make you aware of the problems so that you can take the steps necessary to avoid most of the problems reviewed in this booklet.

In the example in the previous section, we had not only cured the previous \$30,000 in transfers, but we also set aside an additional \$20,000 to have the funds available in the event transfers were made that we all had been unaware of.

Conclusion

Medicaid is a wonderful program. It pays for everything after you pay your income.

But you really need to have a plan.

Identify all assets, all debts, and all possible problems. Create a plan that addresses all of these items and things should go extraordinarily well for you.

Hire Professional Guidance

We call it a MAAP, Medicaid Application Assurance Plan. It is simply a plan that addresses your needs for a smooth application that cures transfer issues and helps to save assets. The best part about it, is that everyone wins. The nursing home gets paid in full and on time, you are able to save some of your life savings, and past problems have been addressed up front and handled so that they do not cause you a problem.

Most importantly, this does not cost you anything additional. When you are in spend down mode you have to spend funds to get the benefits. It's a little counterintuitive. Spending money hiring an elder law attorney will only be of benefit to you.

If you have any questions, I can be reached at info@seniorcareres.com. Thank you.

Carl B. Zacharia, Esq.

August 2022

Contacts

Zacharia Brown Elder Law

Tel: (724) 942-6200

Fax: (724) 942-6202

Email: info@pittsburghelderlaw.com

WebSite: www.Pittsburghelderlaw.com

Offices:

111 W. McMurray Road, McMurray, PA 15317

4500 Walnut Street, McKeesport, PA 15132

7500 Brooktree Road, Wexford, PA 15090

8470 Enterprise Circle, Suite 300, Lakewood Ranch, FL 34202

1021 Hillsboro Mile, Hillsboro Beach, FL 33062

Senior Care Resources, LLC

Tel: (412) 751-6101

Fax: (412) 751-6109

Email: info@seniorcareres.com

WebSite: www.seniorcareres.com

Offices:

111 W. McMurray Road, McMurray, PA 15317

4500 Walnut Street, McKeesport, PA 15132

7500 Brooktree Road, Wexford, PA 15090