



Now You See It - Now You Don't

A dear old friend comes to you with this tale of woe. A few years ago his 84 year old father, Ralph, had a stroke. His mother Ellen, who was 83 at the time, had previously fallen and could get around only with the help of a walker. She also had osteoporosis and emphysema.

Ellen tried gamely to take care of Ralph at home - even with the help of a neighbor for a few hours every day - but she just could not handle it, especially at night when Ralph had to be helped out of bed to go to the bathroom. With great fear and guilt, Ellen arranged for Ralph to go into a nursing home where he could get proper care.

Ellen and Ralph had a few dollars saved for their retirement and their house had been paid off years before. Ellen knew that within a year she would run out of money - she was paying the nursing home almost \$3,000.00 per month, plus paying for prescriptions - so she called her nephew Claude (the lawyer) to find out what could be done.

Claude had been to a few CLE courses on elderlaw, so he thought he knew all about Medicaid. He wrote a Power of Attorney for his uncle, he helped with a determination of the Community Spouse Resource Allowance, advised Aunt Ellen to purchase pre-paid funerals, and transferred title of the house from Ralph and Ellen to Ellen alone in order to avoid estate recovery. He even re-wrote Ellen's Will to disinherit Ralph. Then he applied for - and got - Medicaid for Ralph.

All went well for several years. Eventually, however, Ellen died. Your friend grieved, but finally he learned to deal with the loss of his mother and, in fact, grew closer to his father because of more frequent visits to the nursing home. After a few months, Medicaid requested its annual review of Ralph's case and your friend reported Ellen's death.

Imagine your friend's surprise and dismay when the case worker told him (a) Ralph was no longer eligible for Medicaid, (b) Ralph owed Medicaid a great deal of money in reimbursement for benefits improperly paid, and (c) he and Ralph might even be prosecuted for Medicaid fraud!

Imagine your friend's even greater surprise and

dismay when he learns that Medicaid is right. Follow this logic. There is nothing in Oklahoma law to prohibit a person from attempting to disinherit his or her spouse. However, a disinherited spouse may challenge the Will and elect to take a "statutory share" of the estate (usually 50% of the estate). 84 O.S. §213. Therefore, Ralph could have challenged Ellen's Will and claimed about one half of Ellen's estate. Of course, Ralph would choose not to challenge Ellen's Will because he would lose his Medicaid benefits if he inherited assets from Ellen.

Enter Medicaid. Federal and Oklahoma law requires a person on Medicaid or seeking Medicaid benefits to make reasonable efforts to obtain assets to which the person is entitled, and a person who fails or refuses to make such efforts is deemed to have made a transfer or gift, causing ineligibility for Medicaid benefits. In other words, Ralph is ineligible for Medicaid because he failed to claim his share of Ellen's estate. What's more, he became ineligible for Medicaid soon after Ellen died because he could have elected against the Will then and failed to do so. This means that Medicaid paid benefits for Ralph to which he was not entitled, which means, further, that Ralph has to pay back the full amount paid by Medicaid before Ralph can once again become eligible for benefits.

Finally, if your friend or Ralph knowingly and intentionally failed to exercise Ralph's right to a spousal share in an attempt to retain Medicaid benefits to which Ralph was not entitled, Ralph and your friend might well be subject to prosecution for Medicaid fraud.

Of course, all of this could have been avoided by proper planning and a more complete knowledge of some of the nuances and subtleties of Medicaid law. Maybe Claude should have attended several more elderlaw classes.

Humor for the day: The early bird gets the worm, but it's the second mouse who gets the cheese.

HOLMES, HOLMES & NEISENT, P.L.L.C.

Lee M. Holmes*, Mark L. Holmes & Tracy Speck Neisent*, Attorneys

501 N.W. 13th Street

Oklahoma City, Oklahoma 73103

Phone: (405) 235-8455 Fax: (405) 235-8454

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*Certified as an Elder Law Attorney by the National Elder Law Foundation

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