

MEDICAID

How would you feel if you had spent down assets to obtain Medicaid nursing home coverage, and then found out that the spend down was unnecessary?

Disappointed? Upset? Angry?

Here are seven recent Massachusetts cases where Medicaid nursing home coverage was obtained without a complete spend down of assets.

The people in these cases obtained legal representation, and saved thousands of dollars.

Consider Exceptional Circumstances.

1: A married couple had \$200,000 in excess assets. Medicaid denied the husband's application for nursing home coverage. The wife appealed. She lived in assisted living, and testimony established her medical condition and frailty were "exceptional circumstances" that required the assisted living, and allowed her to keep all of the couple's money. Patient pay amount for her husband: zero.

Is Income Needed for Spouse's Living Expenses?

2: In this case a wife needed nursing home care. Not counting their house, the couple had over \$600,000 in countable assets. Medicaid denied the wife's application. Her husband, age 71, living in

their home, had physical and cognitive impairments. He appealed and was allowed to keep all \$600,000 in assets. He needs the income from these assets to pay shelter costs that are by regulation "necessities."

A Spouse has the right to a resource allowance.

3: The son of a nursing home resident had received a \$20,000 business loan from his mother. Medicaid denied his father's application for nursing home coverage, claiming the business loan was a disqualifying transfer. A Superior Court judge decided mom had a right to loan money to her son using her Spousal Resource Allowance. Medicaid was ordered to cover the father's care.

Understand the special provisions of Trusts.

4: \$140,000 held in a Revocable Trust, for a nursing home resident. Medicaid denied her application. But this Revocable Trust was established by the appellant's brother, there are no required distributions, the trustee had refused to distribute money for nursing home costs, and on appeal a hearing officer decided none of the trust property can count against the appellant. Medicaid now pays for her nursing home care.

A Transaction might not be a Disqualifying Transfer.

5: A 95 year old nursing home resident paid \$250,000 for a 1/3 interest in her son's home, and then filed an application for benefits that Medicaid denied. But a Superior Court judge rejected Medicaid's argument that

purchasing an interest in her son's home was a disqualifying transfer.

Sale of Real Estate might not require spenddown.

6: A nursing home resident owned a life estate in her house. Her children were the remainder owners. When she and her family sold the house, Medicaid terminated her benefits and said she'd have to pay 25% of the sale proceeds for nursing home care. She appealed, and won, because her \$48,000 share of proceeds had been used to pay all the closing costs and tax bills, and the rest was deposited into a pooled trust account for her benefit.

All of the preceding 6 cases were at first DENIED by Medicaid, then carefully appealed by elder law attorneys in Massachusetts, and finally DECIDED IN FAVOR of the person who needed Medicaid, either by an Administrative Hearing Officer, or the Massachusetts Superior Court.

Understand the unique status of retirement funds.

Case 7: This case was not denied by Medicaid. It was approved by Medicaid one week after we filed the Medicaid application. In this case the spouse of the nursing home resident owned a house, plus pension funds, stocks and bonds, and a 1/3 share of a family vacation home. These assets were above the \$110,000 that Medicaid allows a spouse to keep. But in this case the pension funds didn't count at all, because the spouse was still

working and his funds were held in an employer plan. The vacation home fit within his spousal resource allowance after our office obtained an appraisal that discounted his minority share value. The husband did not have to spend down any of his life savings to obtain Medicaid for his spouse.

The point: every case is different. These cases illustrate the complexity of Medicaid regulations.

The case facts summarized here may not apply to your situation. But Medicaid regulations often provide protection for assets that you might not realize, especially if you are in a crisis, and need an immediate nursing home admission. If you do not need nursing home care now, you have even more options.

To learn more about Long Term Care planning and [Medicaid](#), call us for an appointment.

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