ELDER LAW JOURNAL

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ELDER LAW JOURNAL, written by **Attorney Lillian Magee Lloyd**, is published as a service of **Visconti & Boren, Ltd** and is intended for general information purposes only. For specific questions, you should consult a qualified attorney.

Is An IRA Counted By Medicaid?

Louise Williams has had a rough year. Her husband, Tom, suffered a stroke in the early fall and since then she has been trying to keep her head above water, care for Tom, put in a full day's work as a registered nurse and run the household. Not surprisingly, she is exhausted.

To make matters worse, she has just learned from the doctor that her husband will need nursing home care.

In talking with some co-workers, Louise was told that her 401(k) plan at work must be spent down before Tom will qualify for Medicaid. She comes to you to find out if this is true. She tells you that they have the following assets:

1. The house, $250,000
2. 2007 Buick, $9,000
3. Bank accounts, $20,000
4. Savings bonds, $5,000
5. 401(k) (hers), $200,000

You do some quick figuring and tell Mrs. Williams that, in this case, much will depend on whether or not her husband is a resident of Massachusetts or Rhode Island.

Medicaid is very fact specific. By that we mean that the outcome of any particular case can turn on one or two seemingly minor facts. What's more, the laws differ greatly from Massachusetts to Rhode Island in certain respects. this case is an excellent example. Here's why:

If the Williams are residents of Massachusetts, then Massachusetts will say that their total countable assets include the bank accounts, the savings bonds, and the 401(k) plan. (One car and the house are exempt.)

If we add together the bank accounts, savings bonds and 401(k) plan their total assets are $225,000.

With total assets of $225,000 Mrs. Williams will have to spend-down more than $113,000 before her husband will qualify for Medicaid. That's because Massachusetts counts the IRAs, pensions, 401(k) plans and other retirement plans of the nursing home spouse and the community spouse when figuring what assets count for Medicaid spend-down purposes. thus the total spend-down would be more than $113,000.

If Mr. Williams is a Rhode Island resident, on the other hand, the only countable assets for Medicaid purposes would be the bank accounts and savings bonds. That's because the IRAs or other retirement plans of the community spouse, (i.e. the non-nursing home spouse) are not countable. So the total countable assets in Rhode Island would only be about $25,000 and there is no spend-down required.

Thus, in this particular case, the spend-down for Massachusetts purposes would be more than $113,000, while in Rhode Island the spend-down would be 0. this is a significant difference which turns solely on the question of whether or not Mr. Williams is a Massachusetts or Rhode Island resident.

Thankfully, in this case it turns out that Mr. Williams is in a Rhode Island nursing home and Mrs. Williams won't have to spend down any of their hard earned savings.

In Service Training Available

Lillian Magee Lloyd, Attorney at Law, offers in-service training on topics related to:

Division of Assets — Medicaid Planning
Guardianship — Powers of Attorney
Other Elder Law Issues

Call (401) 331-3800 for further information.

Lillian M. Lloyd is a senior associate with the firm of Visconti & Boren, Ltd. Her practice includes estate planning, wills and trusts, probate law, elder law and medicaid planning.

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