

## **NEW JERSEY SUPREME COURT ALLOWS MEDICAID PLANNING**

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On August 5, 2004 the New Jersey Supreme Court reversed the Appellate Division decision in the Matter of Mildred Keri. This decision impacts all senior citizens residing in New Jersey. The case held that adult children who serve as their incompetent parents' legal guardian may transfer to themselves all or part of their parents' assets in order to hasten their parents' eligibility for Medicaid benefits.

Mildred Keri had lived alone in her New Brunswick home. She had two sons who cared for her on a regular basis. She suffered from irreversible dementia and could no longer take care of herself. Her estate consisted of her residence valued at approximately \$170,000 and other assets worth approximately \$25,000. She had a Last Will and Testament that left her assets equally among her two sons. She also had prepared a general power of attorney. The instrument authorized her sons to apply for Medicaid, but did not authorize her sons to make gifts on her behalf for any reason. One of her sons was appointed by the Court as her legal guardian. The son also sought court approval to "spend down" his mother's assets to expedite her qualifying for Medicaid. As part of the "spend down" process the sons would have gifted a portion of their mother's assets to themselves. The Appellate court denied the son's request to "spend down" their mother's assets because Mrs. Keri had never expressed that preference to them or anyone else before losing competency. The decision was appealed to the New Jersey Supreme Court.

The Supreme Court reversed the Appellate Court decision and determined that adult children who serve as legal guardian for their incompetent parents may transfer to themselves all or part of their parents' assets. The court specifically stated that the Medicaid "spend down" plan should be allowed if certain scenarios exist. The Medicaid "spend down" plan should not interrupt or diminish the incompetent person's care. Furthermore, the plan should involve transfers to the natural object of the incompetent person's bounty, and should clearly provide for the best interests of the incompetent person.

The determination by New Jersey's Supreme Court to allow Medicaid planning by a guardian will enable adult children to gift away their parents' assets if they become incapacitated. If assets are gifted prior to applying for Medicaid there is a look back period. For transfers to an individual there is a thirty-six month look back period and a sixty month look back period for transfers to a trust. If the transfers were made during the look back period, they are penalized. The penalty is a period of time that an individual is automatically ineligible for Medicaid. The penalty is calculated by dividing the

uncompensated value of the transferred assets by the state divisor, which is based on the average cost of a semi-private room in a nursing home in that state or region. The penalty can be longer than thirty-six or sixty months or it can be shorter. Transfers by either the institutionalized spouse or their spouse are penalized. Certain transfers are exempt from Medicaid transfer penalties. These include transfers of a home, in certain circumstances, and transfers to certain disabled persons.

In summary, because of the recent New Jersey Supreme Court case adult children who serve as their parents' guardians may transfer to themselves all or part of their parents' assets in order to hasten eligibility for Medicaid benefits. If you are interested in learning more about this case please seek the advice of an Elder Law Attorney.