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Look-Back Period vs. Period of Ineligibility

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Elder law is a complicated area of legal practice, and thus clients sometimes confuse certain concepts that are similar, but distinct. An example of this is the difference between the **five year look-back period** and the **period of ineligibility** for Medicaid that is caused by transfers within the look-back period.

The Look-Back Period

As its names suggests, the "look-back" period is the period of time over which the agency that administers Medicaid (in Pennsylvania, the Department of Human Services or DHS) will review transfers to determine whether they will cause a period of ineligibility for Medicaid.

DHS will look backward for a period of 5 years from the date of an applicant's Medicaid application to determine whether there were any transfers that were made during that time for less than adequate consideration (i.e., less than the fair value of the transferred assets). If any assets were transferred for less than fair value during that 5 year look-back period, then those transfers will cause the applicant to be ineligible for Medicaid for a period of time (the "ineligibility period"), as discussed below.

Note: not all transfers are counted. First, as already suggested, transfers for *fair value* are not counted. Thus, if an asset is sold and if the transferor receives consideration equal to (or greater than) the fair value of the transferred asset, then the transfer will not affect the transferor's eligibility for Medicaid.

Second, certain type of transfers are treated as *exempt* and therefore do not create an ineligibility period. For example, the transfer of a family home to a child may qualify as an exempt transfer and therefore not trigger a period of ineligibility for Medicaid ONLY IF the child has lived in the home for more than 2 years and has also provided caretaking services that made it possible for the parent to avoid the need for institutional care.

Finally, certain transfers are considered *de minimis* (too minimal to be bothered with) and are not counted for that reason. Specifically, if the sum of all uncompensated transfers during any particular month does not exceed $500, then they will not be counted toward the transferor's Medicaid eligibility.

The Ineligibility Period

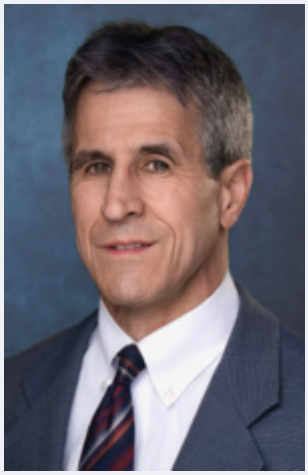
If during the 5 year look-back period, an applicant (or his/her spouse) has made transfers for less than fair value that do not meet one of the safe harbors discussed above, then all of those transfers will be added together to calculate the period of Medicaid ineligibility that is determined by formula.

The formula is a fraction: the numerator is the sum of all of the less-than-fair-value transfers made during the look-back period and the denominator is the average cost of skilled nursing care (measured in days or months) provided throughout the State or Commonwealth. That fraction will produce a number of days or months during which the Medicaid applicant is ineligible to receive Medicaid.

So, for example, if an applicant makes gifts to her children totaling $200,000 over a 5 year period (prior to applying for Medicaid), and if the average cost of skilled nursing care in the applicant's state of domicile is exactly $10,000 per month, then the ineligibility period would equal $200,000 divided by $10,000 per month, or 20 months.

Equally important to understand is *when* the ineligibility period begins to run. Without getting too deep into the weeds, the period of ineligibility runs from the date when the Medicaid applicant would otherwise have qualified – i.e., the date on which the applicant has both a demonstrated medical need for skilled nursing care and has also met all of the various financial requirements (i.e., sufficiently low resources and income), not taking into account the ineligibility caused by the transfers. In other words, the date on which the applicant would otherwise be eligible for Medicaid "but for" the period of ineligibility caused by the uncompensated transfers.

If you have questions about Medicaid or have other Elder Law or Estate Planning concerns, please contact one of our Elder Law Attorneys or call 814-459-2800.



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