Three Common Misconceptions About Qualifying for MassHealth Long-Term Care Benefits

By Lauren E. Miller, Esq.

An attorney working long enough in any area of the law will inevitably find there are certain misconceptions that many clients have. Here are three misconceptions I come across time and time again in my practice as an elder law attorney.

1. "I can gift $14,000 to my kids each year, and it won't impact my MassHealth eligibility."

This is by far the most common misconception that comes up in client meetings. Under tax law, the first half of this statement is accurate. The federal tax code allows you to gift up to $14,000 (the current annual gift exclusion) per person, per year, without the requirement of filing a gift tax return. If you gift more than $14,000 to someone in any given year, you must file a gift tax return, but you will not owe any tax unless you have exhausted your lifetime gift tax exclusion of $5.49 million. There is currently no gift tax in Massachusetts.

However, in the world of MassHealth, the rules are very different. For MassHealth long-term care eligibility, gifts of any amount in the five years prior to applying for MassHealth may be considered "disqualifying transfers." A disqualifying transfer creates a penalty period equal to the number of days the gift would have covered the cost of care in the nursing home. Unfortunately, this penalty period is imposed when you are "otherwise eligible," i.e., in a nursing home with $2,000 or less in assets. In other words, you could find yourself living in a nursing home with no assets or access to MassHealth benefits for weeks, months or longer. Even though you may have given it with the best intentions, the gift can jeopardize your eligibility for care down the road.

After learning this, clients often then ask if this means that they cannot give any gifts at all. The answer to that question really depends on the particular facts and circumstances of your situation. Generally, MassHealth is not looking to penalize an applicant for giving small gifts throughout the year for events such as holidays, graduations and weddings. However, during the application process, the MassHealth caseworker will comb through up to five years of bank statements for each of your accounts, and he or she has the right to ask you to verify any transaction. If you are uncertain as to whether a gift will jeopardize your future MassHealth eligibility, it's best to consult an elder law attorney prior to making the gift.

2. "I can save money by letting the nursing home complete my MassHealth application for free."

If you enter a nursing home with little to no money, or are already in a nursing home and running out of money, the nursing home will tell you that you need to apply for MassHealth, and sometimes it will also offer to submit the application for you for free. This may seem like an attractive offer for certain patients who have no resources to hire an attorney. But oftentimes, letting the nursing home complete your MassHealth application will not save you money. Attorneys are better versed in spend-down strategies that allow you to preserve certain assets, present the facts of any potentially controversial financial transactions and establish MassHealth eligibility sometimes months or years before the nursing home could have. When a MassHealth spend-down is inevitable, paying legal fees to retain an attorney to advocate on your behalf, rather than paying the nursing home privately for a number of additional weeks, results in no financial difference to you. Hiring an attorney provides you with expert legal counsel to represent you through the MassHealth application process. For those who have few or no assets, but have, for example, gifted away assets in the past five years, hiring an attorney may allow you to reduce or eliminate a MassHealth penalty period that is all but certain without the help of an elder law attorney.

3. "Once I've been approved for MassHealth, I should cancel my other health insurance policies."

When you are approved for MassHealth long-term care benefits, you should not cancel your other health insurance because doing so will not save you any money. When your MassHealth benefits begin, you will owe a monthly payment to the nursing home called the "Patient Paid Amount" or "PPA." The PPA is calculated by totaling your monthly income, and then deducting (1) any health insurance premiums, (2) a $72.80 personal needs allowance and (3) occasionally other qualified expenses. If you cancel your health insurance, that amount will no longer be deducted from your PPA, and your PPA will increase by the amount of the premium. Because this results in no net savings, it is best to keep your health insurance, which may cover medical costs above and beyond those covered by MassHealth. **FT**

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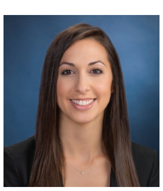

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