

When Mom & Dad Both Need Care: The Case for an Increased Community Spouse Resource Allowance

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We are often called upon to assist families with a loved one facing imminent nursing home care. In some instances, families may face the difficult situation of both parents being ill and requiring additional care beyond what can be provided in the home setting. For example, one parent may require placement in an assisted living facility or rest home, while a second parent may require nursing home level care. In such a situation, long-term care bills can quickly add up. Assisted living and rest home facilities typically cost between \$4,000 and \$7,500 per month, while nursing home care ranges between \$9,000 and \$11,000 per month.

Medicaid, also known as MassHealth, is the primary source of funding for care in long term care nursing facilities. To qualify for Medicaid for long term care, an individual must establish financial eligibility. Assisted living facilities and rest homes typically, with some limited exceptions, require private payment and do not accept Medicaid benefits.

As noted above, complex financial criteria must be met before an individual can qualify for Medicaid benefits to pay for their nursing home care. Currently, the financial asset limit for a couple is \$111,560, with \$109,560 being allotted to the community spouse residing outside of the nursing home, and \$2,000 being allocated to the ill nursing home spouse. The amount allotted to the community spouse is known as the community spousal resource allowance.

When the community spouse is faced with extraordinary medical expenses, he or she may appeal to Medicaid for an increase in their community spouse resource allowance. For example, Medicaid recognizes the fee paid by a community spouse to an assisted living facility or rest home as a medical expense that would justify an increased community spouse resource allowance. If granted, the increased community spouse resource allowance enables the spouse in the assisted living facility or rest home to retain a significant portion

of the couple's assets in excess of \$111,560 in order to continue to pay for their care needs in the community. The nursing home spouse's care will be paid for by Medicaid.

A recent case handled by the Special Needs and Elder Law Practice Group demonstrates the value of seeking legal advice when faced with the difficult emotional and financial scenario of caused by caring for two ill parents. In the case, both spouse's care needs increased beyond what could be provided for them in the home setting. The husband was admitted to a rest home, while the wife was admitted to a nursing home. Private payment invoices for their care at both facilities totaled approximately \$18,000 per month. If the couple had continued to pay privately for their care at each facility, their assets would have been depleted within their life expectancies. We submitted a Medicaid application for the wife, requesting that the husband be allowed to retain all of the spousal assets in excess of \$109,560 to pay his rest home fee.

Because appeals for an increased community spouse resource allowance cannot be decided by a Medicaid caseworker, the case was initially denied. On appeal to the Medicaid board of hearings, we successfully argued to the hearing officer that the community spouse be allowed to retain all of the couple's assets due to his extraordinary medical expenses. The case was approved, and the wife was granted Medicaid eligibility. The community spouse is now able to utilize the couple's assets to continue to pay his care expenses, while allowing his family flexibility to plan for future placement and treatment options as his care needs increase.

The world of Medicaid planning is complex, and contains many traps for the unwary traveler. It is always best to seek advice from competent counsel when your loved one enters a long term care nursing facility, assisted living facility, or rest home.

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To learn how we can assist, contact our Special Needs Practice Group Leader Frederick M. Misilo, Jr. at 508.459.8059 or fmisilo@fletcherilton.com, or Attorney Lisa M. Neeley at 508.459.8073 or lneeley@fletcherilton.com.

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