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Agent Who Withdrew Money for Medicaid Planning Purposes Does Not Have to Return Funds

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The above court decision outlines how a Power of Attorney is a valuable tool in doing Medicaid planning. On the other hand, failure to name an agent under a Power of Attorney can have disastrous results. There is no easy alternative to not having an agent. The only way someone can assist you is by going to Court and having you declared "incapacitated". This is not a pleasant task. And once this happens, a Judge may determine how your assets are used. A Power of Attorney is so much easier, and you, not a Judge, decide what happens. If you do not trust professionals, having a Power of Attorney is even more important because it is the only way to ensure that those same professionals behave.

Choose someone now rather than having someone appointed for you later.

Ms. Hirnyk in the court decision outlined above chose to have Ms. Weiblinger, a person she met at church, as her agent under Power of Attorney. The evidence showed that Ms. Hirnyk was always in control of her own decisions. Some may argue that Ms. Hirnyk was taken advantage of. THIS IS WHY IT IS SO IMPORTANT TO MAKE SURE THAT THE PERSON YOU CHOOSE AS AN AGENT UNDER YOUR POWER OF ATTORNEY IS SOMEONE YOU TRUST.

Be careful about Adangerous powers.@ These are things like changing beneficiaries and disclaiming assets from an

estate where you are a beneficiary. If you give these powers, and many forms routinely do so, make sure you understand how they can be used. An important element that should be added relates to binding arbitration. Nursing homes routinely want this added to their agreements to avoid jury trials. You should consider a clause in your document that prohibits your agent from agreeing to this.

The transfer of funds by Ms. Weiblinger to herself under the Power of Attorney is authorized if the Power of Attorney is drafted correctly, and transfer of funds to herself as agent is a routine planning strategy for Medicaid planning purposes.

What was not addressed in this case is the effect of such a transfer if Ms. Hirnyk went into a nursing home before she passed away. If that happened, and she ran out of money paying nursing home bills and then applied for Medical Assistance, the gift to Ms. Weiblinger would have been penalized as a transfer to intentionally qualify for Medicaid. This would be true even though the Power of Attorney authorized it.

A "penalty" is a number of months where Medicaid is unavailable and is calculated by dividing the gift by the average cost of a nursing home in Pennsylvania (which at this time is around \$10,000 per month - the divisor). The resulting number is the months that Mrs. Hirnyk would have to wait until she could obtain Medical Assistance. If she were out of money at the time she applied and could not obtain Medical Assistance, the cost of those penalty months would be owed by her privately.

Since Mrs. Hirnyk was broke, guess who would owe the nursing home? Her DAUGHTER! If you think the daughter was angry about the gift, imagine her anger if she ended up having to pay the nursing home while Maria kept her money (it is only the children of an indigent parent who are responsible for medical bills and not the agent under Power of Attorney, even if that agent received a gift).

So you can see that gifting is extremely risky and must be done with the assistance of an experienced elder law attorney.

A Pennsylvania court rules that an agent under a Power of Attorney does not have to return money the agent withdrew from a joint account because the evidence showed the agent removed the money for Medicaid planning purposes. In re Estate of Hirnyk (Pa. Super. Ct., No. 84 WDA 2018, April 16, 2019).

Maria Hirnyk needed assistance with shopping and banking. She appointed someone she met at church, Marjorie Weiblinger, as her agent under a power of attorney. The two women opened a joint bank account with Ms. Hirnyk's money. Ms. Weiblinger withdrew money from the account and placed it in an account in her name.

After Ms. Hirnyk died, her daughter filed a petition, seeking the return of the money Ms. Weiblinger took from Ms. Hirnyk's account. Ms. Weiblinger testified that she removed the money at Ms. Hirnyk's direction for Medicaid planning purposes. The trial court denied the petition for the return of funds. Ms. Hirnyk's estate appealed.

The Pennsylvania Superior Court affirms, holding that the evidence shows Ms. Weiblinger did not engage in self dealing. According to the court, the evidence showed that "[Ms.] Hirnyk was consistently strong willed, independent, and always in control of her own decisions," and Ms. Weiblinger credibly testified that she removed the money only in an effort to reduce Ms. Hirnyk's assets for Medicaid eligibility.

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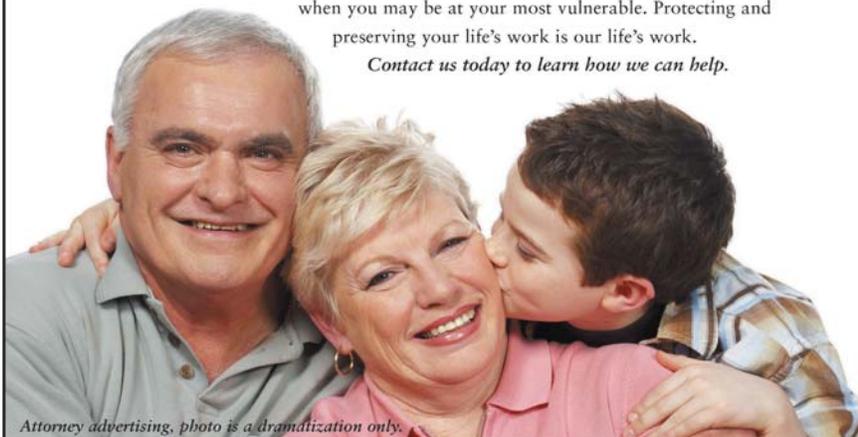
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