



# **ANATOMY OF A CASE**

Practical Medicaid Planning Application

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## How it All Starts

- The call comes in:
  - Geriatric Care Manager in the Dayton, Ohio area has a client who needs help.
- Case basics:
  - Husband and wife are both 50.
  - Wife has form of ALS that leaves her on a ventilator.
  - She's in the nursing home.
  - Private insurance has notified that they will stop paying in the middle of October.
  - Assets are around \$500,000, not including home.
  - Nursing home charging \$600+/day.
  - Husband still working full time and wife has no income.
  - **Can you help?**

## CASE INTAKE

## Initial Determination

- From the basic facts I can deduce the following:
  - Married couple case.
  - This is a crisis case, as care has commenced.
  - Husband is a “community spouse.”
  - Wife not over 65, but meets is medically needy.
  - Spenddown is about \$400,000.
  - Spenddown will deplete assets in 21 months (a little more if she’s approved for SSDI).
  - State has no major issues in using annuities or trusts to convert excess assets to income.
- The Answer to the Threshold Question:
  - **YES WE CAN!**

## CAN WE HELP?

## Closing the Deal

- Conference call arranged with husband.
- Walked the husband through some basic based on information:
  - The couple is a prime candidate for Medicaid Planning.
  - Most assets can be saved if planning commenced in reasonable amount of time.
  - Explained that the spenddown exposed everything over CSRA (\$113,640 for 2012).
  - Explained that we could help “spend” assets by converting them into income to community spouse.
  - Explained that we would come up with a written plan and involve necessary professionals at each stage of the process.
  - Quoted fees for asset assessment and for application processing.
  - Asked the potential client closing question: **Would you like us to help protect these assets and get Medicaid to help pay the costs?**

## SIGNING UP THE CLIENT

## Gathering the Facts

- Detailed intake form completed.
- Specifics about each asset.
  - Current value of each asset?
  - Who is the owner of each asset?
    - Husband?
    - Wife?
    - Joint?
    - Any non-spouse joint owner?
  - What is the tax status of each asset?
    - Qualified or Non-Qualified?
    - Is the asset still being contributed to (i.e., employer sponsored 401k)?

## DETAILED ANALYSIS

## ■ Detailed Asset Summary

ASSET	VALUE	OWNER	TAX STATUS	SOURCE
Home	\$35,573.36	Husband & Wife	N/A	Auditor's value \$274,470 less mortgage \$237.707 and equity line \$11,894.64.
2002 Chevy	\$6,525.00	Husband	N/A	NADA.com
2003 Honda	\$6,450.00	Husband	N/A	NADA.com
2008 Honda	\$17,125.00	Wife	N/A	NADA.com
2010 Chrysler	\$19,475.00	Husband & Wife	N/A	NADA.com
E*Trade Bank	\$6,878.39	Husband & Wife	Non-Qualified	E*Trade Statement
Charles Schwab	\$113,348.00	Wife	Qualified SEP	Charles Schwab Statement
E*Trade	\$23,358.15	Wife	Qualified Roth	E*Trade Statement
Fidelity	\$110,796.15	Husband	Qualified 401(k) Former Employer	Fidelity Statement
E*Trade	\$28,910.71	Husband	Qualified Roth	E*Trade Statement
E*Trade	\$115,000.53	Husband	Qualified Rollover IRA	E*Trade Statement
Fidelity	\$110,841.96	Husband	Qualified 401(k) Current Employer	Fidelity Statement

## DETAILED ASSET SUMMARY

## Countable Asset Assessment

- What's available to be spent down?
- Home equity and most expensive car are protected.
- Total countable assets: **\$539,233.50**

ASSET	VALUE	OWNER	TAX STATUS	SOURCE
<del>Home</del>	<del>\$35,573.36</del>	<del>Husband &amp; Wife</del>	<del>N/A</del>	<del>Auditor's value</del>
				\$274,470 less mortgage \$237,707 and equity line \$11,894.64.
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## COUNTABLE ASSET ASSESSMENT

## Spenddown Analysis

- Total Countable Assets:

**\$539,233.50**

- CSRA for 2012:

**\$113,640**

### Basic Spenddown Formula:

$$\begin{array}{r} \text{Countable Assets} \\ - \quad \text{CSRA} \\ \hline = \quad \text{Spenddown} \end{array}$$

### As applied:

$$\begin{array}{r} \$539,233.50 \\ - \quad \$113,640.00 \\ \hline = \quad \mathbf{\$425,593.50} \end{array}$$

Note: Ohio is one-half deduction state, but because countable assets exceed twice the CSRA, the CSRA is maximized at the upper limit.

**DETERMINE THE  
SPENDDOWN**



## Spenddown Defined

- The spenddown amount is the amount of **assets over the protected limit**.
- Here, the asset limit is exceeded by about \$430,000 (round up to account for possible fluctuation).
- **Assets can be “spent” on ANY Fair Market Value (FMV) transaction.**

## Asset Protection Opportunity

- Excess assets can be converted into income.
- Timing critical.
- Things like cars can't easily be converted into income.
- Spot simplest approach.
- Factor in tax implications of each potential transfer.

**SPENDDOWN =  
ASSET  
PROTECTION  
OPPORTUNITY**

## **Spending Down: Assets Can be Converted Into Income**

- The spenddown can occur when assets are converted into an income.
- The preferable choice is to convert an asset into an income for the community spouse.
- In most states the community spouse can have an unlimited income.
- When you increase the community spouse's income, you decrease the community spouse's likelihood of getting a spousal allowance from the patient's income.

## **CONVERT ASSETS TO INCOME**

## How to Convert Assets into Income?

Three basic ways:

- A “Solely for the Benefit of” Trust (a/k/a Spousal Annuity Trust).
- A Medicaid-compliant promissory note.
- A commercial Medicaid-compliant SPIA.

### Why not use the trust?

1. Trust costs money to implement.
2. Takes time to draft, execute and fund (time is very critical).
3. Cashing out qualified dollars to transfer to trust (or promissory note) is a taxable event; **estimated tax over \$100,000.**

## CONVERT ASSETS TO INCOME (CONTINUED)

## **Allocating the Community Spouse Resource Allowance**

- The CSRA for 2012 is \$113,640.
- The CSRA can be made up of assets that are joint, or owned by the community spouse, or owned by the patient.
- Assets in the CSRA must be transferred to community spouse before the end of year 1 (before re-application is due).
- Generally start by allocating non-liquid assets to the CSRA.
- Here the 3 countable cars were allocated first) \$30,100.
- Left us with: \$83,540.
- Like to keep remaining CSRA as liquid as possible.

**CSRA = PRIME  
REAL ESTATE**

## How transferrable are the assets?

- Needed to investigate each asset to determine whether it could be transferred.
- All accounts could be transferred **EXCEPT** the 401(k) with the current employer.
- Some companies will let you roll over all or a portion of the active 401(k), but this company would not.
- Leaving the 401(k) intact is not an option because it would eat up all of the CSRA.
- Withdrawing the funds would be taxable and incur a penalty.
- SOLUTION: **\$50,000 loan.**

## WHAT CAN BE TRANSFERRED?

## Use in General

- The Medicaid Compliant Annuity allows for the transfer of assets into an income stream.
  - The annuity must be:
    - Irrevocable
    - Non-commutable
    - Non-assignable
    - Actuarially sound
    - Level monthly payments
    - Name the state as beneficiary in first or second position (depending on which spouse is the owner)
  - This case involved the use of 5 annuities\*:
    - Non-Qualified for Husband = \$69,597.26
    - Qualified IRA for Husband = \$232,370.08
    - Qualified Roth for Husband = \$10,000.04
    - Qualified IRA for Wife = \$116,136.18
    - Qualified Roth for Wife = \$12,868.83
- \*Note: These were the final numbers which account for fluctuations in account values and additional unspent earnings accrued between intake and final transfer.

## MEDICAID COMPLIANT ANNUITIES

## Beneficiary Issue

- The need to name the state as primary beneficiary was emphasized to the client.
  - Primary beneficiary on husband's annuities.
  - Husband named primary with state named contingent on her annuities.
- Often the goal is to get the income back quick enough to hedge against early death.
- The husband works and any qualified funds would incur taxation.
- His life expectancy was 28.99 years (347 months).
- He opted for a shorter term (150 months) to:
  - Hedge against early death; and
  - The actual income amount was all the more that his CPA said his taxes could absorb without significant tax.

## MEDICAID COMPLIANT ANNUITIES (continued)

**Process:**

- After receiving all information, a comprehensive plan was drafted and delivered to the client.
- A follow-up phone conference was done to answer any questions and get commitment.
- We worked with the client and his tax advisor to dial in the income figures.
- Executed annuity applications.
- Began process of transferring assets.

**Time Was Critical:**

- Private insurance ran out in middle of October.
- Assets had to be moved by end of the month to qualify for October.

**PROCESS:  
WORKING  
AGAINST THE  
CLOCK**



### **Paying for October**

- Client ran out of insurance on October 15.
- The cost here was over \$600 a day.
- The nursing home likes to be paid in advance for care.
- They get nervous when you don't pay, but promise them you'll be Medicaid eligible.
- Nursing home administrator was coming to patient's room daily asking her how bill was going to get paid.
- In most cases, if you pay full price for the month and get approved for Medicaid – Medicaid won't reimburse you because they will say you didn't need assistance for that month.
- I conferenced with the NH administrator and asked him not to pester the clients.
- I also had the client pay \$2,000 to show them a good faith effort that they would pay and mostly to keep NH administrator quiet.
- Partial payments over the co-pay are usually reimbursed when Medicaid approved.

## **NERVOUS NURSING HOME**

## Transfers

- Client took an active role in transfers.
- Companies had multiple hoops that the client needed to jump through to get money transferred.
- To accelerate the process, wire transfers were initiated to move the money faster.
- **Then Sandy got in the way.**
- Hurricane Sandy shut down commerce in two of the cities the client was working between to get money moved.
- It delayed the wire transfers till **after** October 31.
- In an attempt to smooth over this discrepancy, we ask company to give us October issue date on all contracts – hoping the caseworker will go by contract issue date and not date of transfer.

**ACT OF GOD  
COSTS \$10,000**

## **Application Process**

- Care Manager was responsible for filing Medicaid application and providing documentation.
- Medicaid application filed on October 31 with the hopes of keeping October eligibility.
- Client and care manager worked together to provide necessary documentation.
- Care manager was named by client as “Authorized Representative” for application purposes.
- Face-to-face meeting revealed that caseworker was fresh and had never done a married couple case before.

## **SHEPHERDING THE APPLICATION**

## Standard of Promptness?

- Most cases take about 2 months to process – 3 months for the complicated cases.
- States have a Standard of Promptness (SOP):
  - 45 calendar days beginning with the application date for aged or blind applicants.
  - 60 calendar days beginning with the application date for disabled applicants.
- This case lingered with continual document request – sometimes for the same documents that were provided.
- It took the case worker a long time to get her head around exactly what had transpired.
- Documentation would be provided then we'd go a month or so and get another request.

## NEVERENDING APPLICATION PROCESS

## March Surprise

- I get the following e-mail on March 13 – 4 ½ months after application is filed:

Michael,

I am the Medicaid Case manager for [WIFE].

I am looking over the documents again and I noticed that both of [WIFE'S] annuities list [HUSBAND] as the primary beneficiary instead of the State of Ohio Dept. of Job & Family Services for the total amount of medical assistance benefits.

Ohio must be the primary on this annuity or it is considered an improper transfer.

Please advise if this can be adjusted on her Annuities.

Thank you.

[Medicaid Case Manager]

## MAJOR ANNUITY ERROR

## Error Correction

- Caseworker error is one of the biggest reasons that applications are denied.
- Good rapport with a caseworker can save a lot of time and money.
- When a caseworker makes a determination, they can deny the case (which they are often anxious to do when its complicated).
- Error correction can be done by **fair hearing**, but that would have added months to this process.
- Fixing the problem at the caseworker level before a denial is **always** preferable.
- Caseworker sent the email at: 3/13/13 at 11:00 a.m.
- Our response with a quote of the applicable rule and supporting federal law went out **same day** at 11:46 a.m.
- 12:06 p.m.: After “running it by” her supervisor, case manager calls to tell me that the supervisor agrees with my interpretation.

**RAPID RESPONSE  
IS CRITICAL**

## Approval

- 3-20: I get advanced word that case is set for approval pending supervisor review.
- 3-20: Caseworker candidly writes to me: 'Let's keep our fingers crossed that I have all my "I"'s dotted and "t"'s crossed!'
- 3-20: I said a prayer.
- 4-11: One more document request.
- 4-11: Last document provided.
- 4-11: **Case approved**, retroactive to November 1 (she noticed transfer dates were after 10/31).
- **162 days of processing case.**
- I write to client informing him of approval and need to pay remainder of October's bill:  
**"All-in-all, I'd call this a victory!"**

# VICTORY

## **Client's Reply:**

Mike,

Let's see: pay \$10K one time; or  
\$100K for Nov thru April plus \$20K  
per month? I agree I think we can  
call that a victory.

The SSDI for Nov thru April will  
almost cover the \$10K.

Thank you for everything you've  
done for us!

## **POST-SCRIPT**