

COMMON SENSE NEWS

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THE CLIENT WHO STARTED IT ALL

Each year, we set aside a day to remember those who have died in service to our country. Here's a story about a client of attorney Rick Gibson, the client who, you could say, sealed Gibson's interest in elder care law.

One day in the summer of 2002, Gibson got a call one day from a social worker at St. Anthony's Health Center in Alton. She had heard him speak at the hospital on elder care legal issues and told him about a patient who was about to check himself out — against the advice of doctors — because he had things he needed to do.

What Gibson found was Talbert Phillips, 82 and battling cancer. Phillips lived alone in his South Roxana, Ill., home next to an oil refinery — the same refinery he had retired from — and there was no one to help him take care of basic financial and legal issues.

So for the next four weeks, Gibson helped Phillips get his financial and legal affairs in order. He helped him write a last will & testament; he advised Phillips on what to do with his house; he made contact with really the only significant person in Phillips' life, a Glen Carbon woman named Catherine, the daughter of woman he used to date. He even made visits to Phillips' home — all to help a dying man in the last stage of his life. And what happened?

They got to know each other.

Gibson found out, for example, that Bert, as he liked to be

called, was a navy veteran of World War II. Bert found out that Gibson's father was a navy veteran of the 1950s.

The two men had an instant bond. One day, Gibson noticed that in Bert's home was a framed picture of the USS Charles Carroll, a navy destroyer. That prompted Gibson to ask Bert about his service in World War II. Bert just didn't want to talk about it.

It wasn't until later, after Bert died, that he found out from Catherine that only once did Bert mention anything to her about his military service. They had been watching TV when a story came on about the Bataan Death March, the infamous march in the Philippines in which 100,000 of 600,000 prisoners of the Japanese died of starvation or malnutrition. Bert mentioned, "I was in that March to Bataan," but said no more about it.



Bert was one of the survivors of the Bataan Death March and didn't want to talk about it. He preferred to live his life in anonymity, a simple retired refinery worker, a guy we probably would have barely noticed had we run into him on the street.

But that didn't make his contribution to our country's freedom any less courageous.

Bert's life and death touched Gibson so much he wrote a letter to the *Alton Telegraph* after Bert died. Gibson's letter touched the editor so much he wrote a column about the relationship between the two men.

"Virtually everyone reading this letter has gotten to live their life in the greatest country in the world," Gibson wrote. "We have gotten to do this because men and women like Talbert Phillips were willing to do their part and make whatever sacrifices it took to keep our country free."

"I'm glad we got a chance to mention Bert and what he did to keep America free," executive editor Dan Brannan wrote. "It's also good a member of the younger generation, Gibson, has taken time to help one of our forgotten heroes."

You can look it all up on Page A4 of the September 22, 2002 issue of *The Telegraph* if you want, but the story remains. Gibson looked at Phillips not only as a client, but as a member of what Tom Brokaw calls the Greatest Generation. And he never forgot him.

THE TOP EIGHT MEDICAID MISTAKES

Applying for Medicaid can be a painful and intimidating process. Here are eight things to avoid:

1. Thinking it's too late to plan.

It's almost never too late to take planning steps, even after a senior has moved to a nursing home.

2. Giving away assets too early.

Take care of yourself first. Don't put your security at risk by putting it in the hands of your children.

3. Ignoring safe harbors created by Congress. Certain transfers are allowed without jeopardizing Medicaid eligibility. These are: transfers to disabled children, caretaker children, certain sib-

lings and into trust for anyone who is disabled and under age 65; a transfer into a "payback trust" if under age 65; and a transfer to a pooled disability trust at any age.

4. Failure to take advantage of protections for the spouse of a nursing home resident. These include the purchase of an immediate annuity, petitioning for an increased community spouse resource allowance, and in some instances petitioning for an increased income allowance or refusing to cooperate with the nursing home spouse's Medicaid application.

5. Applying for Medicaid too early. This can result in a longer

ineligibility period in some instances.

6. Applying for Medicaid too late. This can mean the loss of many months of eligibility.

7. Not getting expert help. This is a complicated field that most people deal with only once in their lives. Tens of thousands of dollars are at stake. Consult with a professional to guide you.

8. Confusion about the difference between lifetime liens on property and estate recovery. There are a number of exceptions to lifetime liens on property, but for estate recovery there is only a deferral for a surviving spouse and a hardship waiver.

*One law for the
informed and
another law for the
uninformed.*

DON'T FILE FOR MEDICAID

Don't file for Medicaid? Isn't that one of the avenues open to me as a taxpayer. Don't file, that is, until you are absolutely sure you are qualified. Why? Because timing is everything!

Once you apply for Medicaid, you lose the opportunity to protect your assets. It's foolish to throw away the flexibility that exists prior to an application.

It's also important that you don't file too late. You risk losing money if you do. An elder care professional can usually determine the amount of money that you will save and the appropriate date that the Medicaid application should be filed. Typically that's 60 days prior to the date the applicant is eligible for benefits.

Remember, a Medicaid application requires a mountain of paperwork, and is then submitted to an inefficient government processing system. There are often many hidden potholes, obstacles and dangerous curves in the road.

No wonder people are so intimidated by the process. But not if you have help.

BUT IS IT ETHICAL?

Applicants often ask the question whether or not Medicaid-related asset protection strategies are legal and ethical.

Of course they are. Asset protection strategies are never hidden from a Medicaid caseworker. Every transaction must be detailed on the Medicaid application.

Often, the areas where a legally-sanctioned protection has been used is highlighted on the

application and a legal rule or court case is cited to justify the transaction.

It's common though, for a strategy to be rejected at the caseworker level because the caseworkers are not authorized to approve sophisticated legal benefits. That's where a good lawyer comes in and usually prevails at a hearing or an appellate procedure.

Medicaid laws change frequently, so that's why it's impor-

tant to use an elder law attorney who specializes in just these issues.

Does it all sound too good to be true? Most regular lawyers don't even know Medicaid law, so it's not surprising that the public — and even well-intentioned and well-educated individuals within the senior services network — are unfamiliar with the concept that there are legal and ethical protections available.

THREE LESSONS BERT TAUGHT ME

Dear Readers:

On the front page you read the story of Talbert Phillips, a man I knew for a short time but was someone who had a profound effect on my practice and my personal life.

Bert was, by all accounts, a man living by himself next to an oil refinery in South Roxana, Ill. He had retired from that refinery with a pension and a mortgage paid in-full – and not much else. He did a pretty good job of taking care of himself, yet he ignored the early warning signs of the cancer that was eating through his body. It wasn't until he couldn't get out of

bed and had to go to a hospital in an ambulance did he seek medical care.

I met him through sheer luck. He was going to check himself out of the hospital against medical advice so he could settle his affairs. A staff member had heard me speak at the hospital on elder law issues and called me to talk to Bert and let him know his options. We were able to help him and Bert was able to complete his exemplary life comfortably. Meeting Bert and handling his affairs clarified for me three things:

1. There is a serious lack of information among our sen-

iors about their options.

2. No matter how nondescript a person may appear to the outside world, you never know about them until you spend time with them. Bert was a World War II hero whose sacrifices have allowed me and my family the opportunity to live in the longest period of peaceful prosperity the world has known.

3. Our culture needs to do a better job treating our elders with respect and dignity. Our seniors should be treated as treasures and not inconveniences.

Rick Gibson

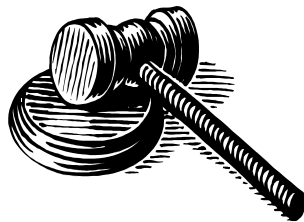
MORE FALLOUT FROM THE DEFICIT REDUCTION ACT OF 2006

Under the Deficit Reduction Act of 2006, "any gift or transfer (e.g. gifts to children, charities, church tithing, any giving whatsoever) is now subject to the new transfer rules."

This poses a serious issue for nursing homes and their residents. Why? Medicaid transfer penalties don't begin until the resident is in a nursing home and already spent down to the Medicaid limits. Only at that point does the penalty start.

So what can you do?

You and your elder law attorney can fight back. You can assert that the penalty was a non-Medicaid-motivated transfer. The person who gives the gift can assert that this was done without any Medicaid motive



in mind and therefore there should be no penalty.

It's an argument that can be made, but the law is new and it's not known how these arguments will play out. There is another option: the Hardship Waiver.

According to the new law, "... the facility in which the institutionalized individual is residing may file an undue hardship waiver application on behalf of the individual ... and the State may provide for payments for nursing facility services in order to hold the bed for the

individual at the facility, but not in excess of payments for 30 days.

But here's the dilemma: Under the law, a nursing home or resident will file an application stating that the discharge would jeopardize the resident's life or health. If they win, the penalty is waived.

But what if they lose? Can the facility now discharge the non-paying resident? It would be difficult since the facility just argued that discharge would jeopardize the resident's health and welfare. If that's the case, then discharge under the Nursing Home Reform Act would not be permitted.

The nursing home then, is stuck in the middle. Yet another reason why planning ahead is critical.

*Do not resent
growing old;
many are denied
the privilege.*

-an Irish Blessing

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and address and we'll
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DEFINITION OF AN OPTIMIST

Now here's someone to look up to: Alex Holden, a retired engineer from Surrey, Great Britain, placed a wager at the age of 90 that he would live to 100. Bookies were so confident he wouldn't make it they offered him 250-1 odds if he placed a maximum bet of 100 pounds. He took the bet.

On April 24 of this year, Holden turned 100 and won that bet, pocketing 25,000 pounds. Mr. Holden, who has two sons aged 70 and 60, told a British newspaper he planned on spending the winnings on a family holiday.

When asked his secret to his long life, Holden said: "I do as little work as possible, get as many holidays as I can and have porridge for breakfast. And of course you need to keep breathing. That's essential."



Spend a little time each day putting together important documents, so you'll have time to hear the music.

Whether or not you live to 100, it's still important to take the time to put together important documents into an "emergency kit" so you won't have to find them under stress if you need them.

PERSONAL: Social Security Card (original or photocopy); Driver's License copy; Motor

vehicle registration

HEALTH: Medicare card; Copy of Medigap policy and agent contact information; List of current medical conditions; List of current medications and dosage; Primary care physician and phone number; Specialist physicians and phone numbers

LEGAL DOCUMENTS

Living will; Power of attorney for medical and financial decisions; Elder law attorney number (there's a good one in the upper left hand corner of

this page.)

FINANCIAL

Co-signing power for bank and brokerage accounts; Safe deposit bank location and box number; Savings account numbers; Investment portfolio; Stock broker or financial advisor phone number.