

## The Elderlaw Forum: Mother "presumed" to own joint accounts

by Professor\_Michael\_Myers

The couple's 86 and he's 88--farmed for a lifetime, reared four children and lived conservatively.

Five years ago they sold their farm, placed the net proceeds of \$250,000 in joint certificates of deposit and moved into a modest apartment. Their older car ran well. Household belongings were adequate. Two children lived nearby. Life was reasonably secure.

Then, "Mom was admitted to a nursing home today," emailed the daughter. "We are concerned that Dad will not have enough money to last the rest of his life. He is still very healthy and we expect him to live quite a while. He rents an apartment and receives about \$400 a month in social security income.

"We were told by a California attorney that Mom's name could be taken off the CD accounts and it would not be considered a prohibited "transfer" of assets according to Medicaid guidelines. Is this correct? If so, what is the proper way to do this?"

My response: "Medicaid treatment of joint accounts is very complex. Normally joint accounts permit either party to make unlimited deposits and withdrawals, as long as ownership is couched in "or" rather than "and" language. Your California attorney presumably had this in mind when he gave you that advice.

"The problem is that Medicaid officials take the position that joint accounts owned by spouses are "presumed" to be the property of the Medicaid applicant. In applying that legal fiction, the state will contend your father lacked the capacity to remove your mother's name from the joint accounts and will impose a "penalty period" equal to the amount of the transfer-- \$250,000-- divided by the average monthly nursing home cost--\$6,000" or 41 months."

Here is what happens when a spouse moves into a nursing home and applies for Medicaid: A "snapshot" of the couple's total assets is taken, leaving out exempt assets: \$3,000 in assets, two burial allowances, a car, jewelry, clothing, and the house. In this case, the couple's total nonexempt assets will be deemed available for her mother's care.

Her father, as the community spouse, can retain \$109,560 in assets and \$1,750 in monthly income. They should be prepared to proceed under those limitations. An alternative course of action: Her father could use the farm proceeds to buy a house, converting the cash accounts' "non-exempt assets" to a home, an exempt asset as long as he lives there. He could then supplement his social security income through a carefully

structured reverse mortgage.

(Pro bono legal information and advice provided to persons 55 and older through the USD Senior Legal Helpline, 1-800-747-1895; mmyers@usd.edu Opinions solely those of author and not the University of South Dakota)

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