The Elderlaw Forum: Mother â€˜presumedâ€™ to own joint accounts

by Professor_Michael_Myers

The coupleâ€”sheâ€™s 86 and heâ€™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, â€œMom was admitted to a nursing home today,â€• emailed the daughter. â€œWe 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.

â€œWe were told by a California attorney that Momâ€™s name could be taken off the CD accounts and it would not be considered a prohibited â€˜transferâ€™ of assets according to Medicaid guidelines. Is this correct? If so, what is the proper way to do this?â€•

My response: â€œMedicaid 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 â€œorâ€• rather than â€œandâ€• language. Your California attorney presumably had this in mind when he gave you that advice.

â€œThe problem is that Medicaid officials take the position that joint accounts owned by spouses are â€˜presumedâ€™ 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 motherâ€™s name from the joint accounts and will impose a â€œpenalty periodâ€• equal to the amount of the transfer-- $250,000-- divided by the average monthly nursing home cost--$6,000â€”or 41 months.â€•

Here is what happens when a spouse moves into a nursing home and applies for Medicaid: A â€œsnapshotâ€• of the coupleâ€™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 coupleâ€™s total nonexempt assets will be deemed available for her motherâ€™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 accountsâ€”non-exempt assetsâ€”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)