

Elder Law: When Should I Buy My Funeral?

By Colin Morgan, Esquire
June 1, 2012

When an individual applies for Medicaid, he or she must meet certain medical and financial requirements. While the need to reside in a skilled nursing facility may imply medical eligibility, achieving resource eligibility presents a litany of considerations that can make or break a person's application.

The asset limit for an individual applicant to be considered resource eligible for Medicaid depends on his or her income. An individual is generally resource eligible for MA purposes if he or she maintains \$2,400.00 or less in countable assets. This presents an over-resourced applicant with the daunting task of spending down his or her excess countable assets or invoking planning techniques to convert assets from being countable. While there are many options an applicant can choose for spend down or asset conversion, the purchasing of a burial reserve is the focus of this article. This particular tool allows the applicant to spend down a significant amount of assets as well as address costly funeral expenses proactively.

When an applicant decides to utilize a burial reserve for spend down, a host of questions present themselves, such as:

- When should I purchase a burial reserve?
- How do I go about doing so?
- How much money am I allowed to spend?
- Who should I purchase it from?"

The following paragraphs set forth the timing and manner in which one may properly use a burial reserve as a useful spend down tool.

Timing: The first important consideration to the individual utilizing a burial reserve is timing. Purchasing the reserve too early can deplete the applicant's resources prematurely, while purchasing a burial reserve too late can defeat the entire purpose of doing so. The best time to purchase a burial reserve is after the "snapshot date" but prior to the date the applicant formally requests Medicaid Benefits. The term "snapshot date" describes the beginning of the applicant's first continuous 30 day period of institutionalization. This date is used as a starting point to determine the value of countable resources of the applicant (and community spouse if the applicant is married) and, in turn, how much the applicant will need to spend down in order to become resource eligible.

Qualifying the Burial Reserve as Exempt:: The second vital consideration is the nature of the burial agreement itself. For an asset to be excluded in the MA application process, the applicant must relinquish all control of said asset. In other words, to properly use a burial reserve as a spend-down tool, it must be irrevocable. To be irrevocable, assets used to purchase the reserve must be transferred to a financial institution or funeral director. This can be done by a written instrument that prohibits any of the funds to be withdrawn or used before the death of the person for whom the reserve was created.

Value of the Account: Finally, an applicant must consider how much money should be used to fund a burial trust. This presents a balancing act. The individual must weigh maximizing the reserve with triggering a potential period of ineligibility due to Medicaid's five year look back period. In Pennsylvania, the amount deposited into a burial reserve must meet the test of "fair consideration." Pennsylvania Medicaid rules state that the reserve must not be, "exorbitant" compared to the average cost of a burial reserve in the area. "Exorbitant" in this case is a legal term of art that includes reserves which exceed the average local reserves by more than twenty-five percent. In order to glean the average burial reserve cost, the planner should contact the local County Assistance Office to compare utilizing quotes from local funeral homes.

In summation, to achieve resource eligibility for Medicaid, an applicant may spend down a significant amount of assets while proactively addressing funeral costs by purchasing a burial reserve. However, in doing so, an applicant is often presented with difficult and complicated considerations. While this article addressed some of the considerations on this matter, it is advisable for an applicant to contact experienced legal council when contemplating the purchase of a burial reserve.