

## Uh-oh! Filial support crosses state lines

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It seems that almost annually we end up discussing the filial support issue. This is a concept whereby family members can be held responsible for paying for another family member's medical/custodial care.

Several interesting cases have been decided over the past few years.

More than a year ago, the Pennsylvania Supreme Court agreed to hear an appeal on the [Melmark vs. Schutt case](#) involving parents living in New Jersey who placed their adult son with a disabled in a Pennsylvania care facility and then refused to pay for his care.

When the facility operator Melmark sued the Schutts for over \$200,000, they claimed New Jersey law — not Pennsylvania law — should apply, thus relieving them of the burden of paying for their son's care under the more protective New Jersey statute.

Last month, the Pennsylvania Supreme Court rendered its decision, reversing the Superior Court by finding that Pennsylvania's Filial Support Act applies — also stating that the Schutts were unjustly enriched by their nonpayment for their son's care.

In its opinion, the court writes, "... Pennsylvania plainly has a strong interest in ensuring that relatives do not leave their disabled family members at private Pennsylvania facilities in such a way that those facilities are forced to incur substantial uncompensated expenses on an indefinite basis — an interest which is reflected in 23 Pa.C.S. §4603" (the Pennsylvania "Support of the Indigent" statute).

The facts of this case shed a little light on the situation in that the Schutts appear to be wealthy people and had a choice to place their son in care that would have been paid for by Medicaid, but they didn't.

Caring for a family member with disabilities, especially a child, is difficult enough without even considering the financial ramifications. Moreover, sometimes tough choices must be made on behalf of individuals with disabilities who need specific care plans that may not be available in certain geographic locations.

We will probably never know everything that led up to the decisions that took place over a several-year period while the Schutts' son was cared for by Melmark. The record does indicate the Schutts were very involved with weekly visits with their son, as well as funding various optional therapies outside the services provided by Melmark. By the time you read this column, we should know if the Schutts have attempted to file an appeal to the U.S. Supreme Court.

The recurring lesson demonstrated by this case portends the need to get help when a family member — young or old — has a long-term disability.

Besides the obvious manifestation of readily identifiable medical conditions that are defined as specific chronic conditions, when a person spends more than a week in a hospital, your radar should pick up the signal that at some point health insurance may stop paying for additional care that may be needed.

Remember, health insurance (be it Medicare or some other private insurance) is typically used for short term, acute conditions, procedures and rehabilitation.

Thus, if you are the adult child of an aging parent or the parent of an adult child with disabilities, you need to have the conversation about what to do when things progress to the point where the family member will need expensive care. In addition, in some families there are adult siblings who tend to want to be "in control" of the situation.

If you're the sibling who is not in the information or control loop, you might want to find out what's going on or consult with a lawyer who understands this stuff (a technical legal term) so that you don't get surprised later with a support claim for a parent whose finances for whom you were not in charge.

Remember, the filial support law is blind to allocation of liability among siblings/adult children. The plaintiff can seek payment from any family member — not only the one who was “helping” the parent over the years.

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