



The Elderly Plaintiff

By Julian E. Gray, CELA*
March 7, 2021

Many clients in personal injury cases are disabled for life. In addition, many of those clients are “younger” and have a considerable number of years ahead of them. There are many options and programs to assist younger disabled people throughout their lives, even after receiving a financial windfall from a settlement. But how about the elderly client? While many people’s definition of what is “old” these days may vary (remember, you’re as young as you feel?), in the world of personal injury settlements, Federal and State law dictate that “old” is age 65 in at least one context.

For Medicaid eligibility purposes, and for over 25 years, disabled people have been able to transfer countable resources into a statutory Special Needs Trust without penalty or disruption of benefits - with one catch. The disabled person had to be younger than 65 years old. For more commentary on whether to actually use a Special Needs Trust for settlement planning, see our article entitled, “Don’t Put All of Your Eggs in One Basket - When a Special Needs Trust is not the Only Answer” published on December 27, 2020.

So, what happens when an injured person over age 65 receives a settlement? Chances are that person is receiving long term care services in a facility or home setting. If not, that person should have an eye towards that scenario in the near future. Statistics indicate that over half of us will need nursing home care at some point in our lives. Now, introduce the compounding factor of an injury to the scenario and it increases the likelihood of needing this expensive level of care.

Medicaid covers 65% of the skilled nursing home care in this country, which in Pennsylvania is currently in excess of \$10,500/month. However, because of the strict low asset amounts permitted to be owned by a Medicaid applicant, the receipt of a personal injury award, even a modest one, could complicate eligibility until the awards funds are spent down. Furthermore, since the client is over age 64, he/she cannot simply deposit the funds into a Special Needs Trust. In fact, any gifts at that point would be subject to the Medicaid five-year lookback and transfer penalty rules.

Let’s fast forward to the conversation you will have with your elderly client or her/his family when the case settles: “I’m sorry your father was injured by that doctor/hospital and ended up in a nursing home. We got a decent settlement of \$500,000 and your father’s share will be \$300,000. But, he is now ineligible for Medicaid because he has too much money and if he

gives the money to his family he will trigger a penalty under the five-year lookback period. So, you'll just have to pay his \$10,500/month bill at the nursing home until he exhausts his settlement money." That's a tough way to close out a case, especially after a family has waited years to settle the case with the anticipation of getting something.

The good news is that there are options to assist the elderly client with maintaining a significant portion or all of his net settlement without using a Special Needs Trust. The key is recognizing the elderly client's situation long before the settlement occurs so that the options can be investigated and a game plan formulated. In addition, the elderly client should be given special consideration because of his/her age and anticipated long term care costs in the areas of care setting options (Home or Facility) as well as special legal documents specific to the needs of the elderly (more on that topic in a future issue).

In summary, there are numerous settlement planning options for the elderly plaintiff, EVEN if he/she is already in a nursing home and receiving Medicaid benefits.

Call us to review your client's situation before it's too late.

The attorneys at Julian Gray Associates have assisted numerous personal injury attorneys, their clients and families to maximize their clients' results. For a no obligation, confidential discussion of a pending matter, please contact Julian at 412-458-6000 or visit SaveYourSettlement.com

*Certified as an Elder Law Attorney by the National Elder Law Foundation under authorization of the Pennsylvania Supreme Court.