

MEDICAID ELIGIBILITY FOR NURSING HOME CARE (PART I)

By David S. DeRose, Esq.

Over the last several years, I have found that many of our clients are particularly concerned with their ability to pay for nursing home care if circumstances warrant their confinement to a skilled nursing facility. Couples worry that their homes may be sold out from under them or that one of them will become impoverished because of the cost of the care for the incapacitated spouse.

The intent of the law has always been to provide care to those who are in need, regardless of their ability to pay for it, and not to impoverish anyone. But because we are living longer (though not necessarily better), the resources available for payment of our care are becoming increasingly strained. Since 1965, medical assistance (Medicaid) has been available to those who are 65 years or older, disabled or blind to pay for skilled nursing care, if the individual is financially eligible. Over the years, Congress and economics have changed who is financially eligible. The most recent change occurred on February 8, 2006.

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NEW ELECTRONIC VOTING MACHINES

By Richard H. Galloway, Esq.

Voting machines have been the subject of a lot of debate and litigation in the past few years. The problems that arose in Florida during the 2000 Presidential election eventually reached the Supreme Court of the United States. It dramatically demonstrated the need to make voting machines more foolproof and at the same time more accessible to all.

Our democracy depends upon all of us exercising our hard-won voting rights. The federal Help America Vote Act (HAVA) mandated that all states adopt new voting machine technology. Since none of us have seen or used these machines, we can take the opportunity to acquaint ourselves with them before the May 16, 2006 primary election in Pennsylvania.

For general information, visit www.votespa.com. For information about your specific county, go online at:

Allegheny County:	www.county.allegheny.pa.us
Armstrong County:	www.co.armstrong.pa.us
Fayette County:	www.co.fayette.pa.us
Indiana County:	www.countyofindiana.org
Washington County:	www.co.washington.pa.us
Westmoreland County:	www.co.westmoreland.pa.us

*** BE SURE TO VOTE ON MAY 16TH !! ***

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The LEGAL UPDATE is prepared by the staff of QRG for its friends and clients. The UPDATE sets forth general principles and should not be acted upon without specific advice.

ON THE AIR

QRG, in conjunction with WCNS radio in Latrobe, has initiated a radio series designed to educate the community on various legal issues that people confront at different points along their path of life.

QRG's show, "The Legal Checkup™", is part of WCNS' Saturday morning series, "Talk Block". Recent topics have included school law, injuries and accidents, the new DUI law, and nursing home planning. The half-hour show debuted April 1, 2006 and will air every Saturday morning at 9:30 a.m. on WCNS radio, 1480 on the AM dial, through June 2006. Past shows can be heard online at www.1480wcns.com.



SEARCH WARRANTS UNDER THE PATRIOT ACT

By Brian Patrick Bronson, Esq.

Since September 11, 2001, terrorism and national security have been in the forefront of the daily news. In response to the attack, Congress passed the Patriot Act, designed to aid law enforcement in battling terrorism. Many people are concerned with the impact it has on our individual rights.

The Patriot Act expands the surveillance power of the government in four areas:

- Records searches: the ability to look at an individual's records that are being held by a third party, such as cell phone records and records of purchases
- Secret searches: the ability to search private property without prior notice to the owner
- Intelligence searches: the ability to collect foreign intelligence information
- "Trap and trace" searches: the ability to collect "addressing" information about the origin and destination of communications, rather than its content

Prior to the Patriot Act, law enforcement officials first had to obtain a warrant based on probable cause from a neutral magistrate prior to conducting a search. The Patriot Act still requires the authorities to obtain warrants, but does away with the probable cause requirement. This means that the authorities can get a warrant merely by asserting some belief that the individual is involved in terrorism.

Another major change deals with notice of searches. Ordinarily, the Fourth Amendment requires the government to obtain a warrant and give notice before conducting a search, enabling the person to challenge the warrant for an irregularity in the warrant, such as a wrong address, or a limitation that the police are exceeding. The Patriot Act allows law enforcement agencies to delay giving notice, which means that the government can enter a property with a search warrant when the occupant is away, search through the property, take photographs, and seize items, including electronic communications -- and not tell the person until afterwards.

The Patriot Act raises some questions regarding rights and freedoms guaranteed in the United States and Pennsylvania Constitutions. Some fear that the word "terrorism" can be so broadly defined that activities protected by the freedom of speech and the right to assemble could lead to an investigation merely because the government does not like what was said. The courts continue to struggle with the balance between the need to protect our nation from terrorism and the need to guard our freedoms zealously.

MEDICAID ELIGIBILITY FOR NURSING HOME CARE

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HOW DOES THE LAW IMPACT YOU?

Let's talk for a moment about a fictitious couple, John and Katie Elder. This Latrobe couple has been married for fifty years. They have four children. Their assets are as follows:

- A modest home they've owned for 40 years: \$140,000
- Checking, savings and certificates of deposit at PNC Bank: \$150,000
- A 2005 Buick sedan: \$ 20,000
- 200 shares of Timken stock: \$ 6,000
- Cash value of 2 whole life insurance policies: \$ 20,000

Both spouses have Social Security income (John at \$950/month and Katie at \$500/month) and John has his monthly pension of \$900 from Timken Co. Of course, they do not have any debt!!!

John Elder is now 79 years old. He has suffered a stroke and is being treated at Latrobe Hospital. The doctors have informed Katie that John will need to be discharged to a skilled nursing facility.

Since John has been in the hospital longer than three days, Medicare (not Medicaid) will pay for his nursing home stay for the first twenty days. It may also pay a small portion of the care for the next eighty days of care. After that, Katie has to figure out how to pay for John's continued care in a skilled facility which now costs an average of \$6,062 per month. From this example, it is easy to see that John and Katie's monthly income (\$2350) is insufficient to pay for this care. Their assets are going to have to be utilized to make up the difference, unless they had previously purchased long term care insurance to help defray these expenses (they did NOT). Beyond that, Katie is going to need help through the Medicaid program.

WHAT ISSUES DOES KATIE FACE IN QUALIFYING JOHN FOR MEDICAID RELIEF?

First issue: The couple's home. In most circumstances, the family home is a protected asset between spouses. The February 2006 Medicaid law change permits Katie to keep her home as long as it has less than \$500,000 in equity value. She may also keep its furnishings and equipment as well as her personal items such as jewelry.

Second issue: the Buick. Katie may keep the Buick. One vehicle of any value is excluded from consideration.

Third issue: PNC accounts of \$150,000, stock value of \$6,000 and life insurance cash value of \$20,000. Under the regulations, Katie cannot keep all of these resources and still qualify John for medical assistance. Of the total assets of \$176,000, the rules generally permit Katie to retain approximately 50% (\$88,000) for her own use, while committing the other half to the cost of John's care.

But let's not stop the analysis here - let's dig a little deeper. In reality, John will be permitted to maintain his own bank account with a minimum of \$2,400. Both spouses are permitted to purchase their burial plots, grave markers and prepay their funerals. The value of the life insurance policies (\$20,000) could easily be committed for that purpose. Katie has always wanted a bathroom on the first floor of the house, and a new roof is in order. Perhaps \$25,000 or \$30,000 of the PNC accounts could be used for these improvements. Katie could upgrade the 2005 Buick to a 2007 Buick. These are just a few ways to reduce the amount of money that we originally thought would have to be committed to the cost of John's care.

WHAT ABOUT GIVING ASSETS AWAY?

Under prior law, a planning strategy that had been used successfully was to gift a portion of the parties' assets to their children. Can this still be done? We will explore this subject in part 2 of this article in our next newsletter.

DO YOU NEED MINE SUBSIDENCE INSURANCE?

By Joyce Novotny-Prettiman, Esq.

Your homeowner's insurance does not cover damage from mine subsidence. Given the history of coal mining in southwestern Pennsylvania, this may be of interest to you. According to the Pennsylvania Department of Environmental Protection (DEP), mines have been active in coalfields since the late 1700s in 43 of the 67 counties in Pennsylvania.

What damage can be caused by mine subsidence? Problems such as buckling and collapsed foundations, cracked mortar and brick work, and cracked plaster and drywall may be signs of mine subsidence.

To see if your home is at risk for mine subsidence, you can consult DEP maps available by county and township, or you can contact the DEP. They will attempt to locate the site in question and determine if mining has been done in your area.

If your home is in an area that has been mined, you may want to obtain insurance through the Commonwealth's Mine Subsidence Insurance (MSI) Fund or your insurance agent. Your home should be insured for its replacement value.

Coverage for a home valued at \$150,000 would cost approximately \$128.50 per year. If you are 65 or older, you will get a 10 percent discount on the premium for your primary residence. Policies are issued with a \$250 deductible and minor damage may be excluded from coverage.

Claims are filed with the local DEP office and investigated by the MSI Fund, which has been in operation since 1961 and has paid over \$20 million dollars in claims. Claims are paid based upon actual repair costs or replacement of the structure, whichever is less.

This is one of those things where action is required before you have a problem. The DEP has made a wealth of information available to homeowners:

- On the internet at www.paMSI.org
- Through a toll free number 1-800-922-1678



WHAT'S THE VERDICT?

By Richard H. Galloway, Esq.

You've all heard about the customer who got an ordinary cup of coffee from a McDonald's drive-through, put the cup between her knees to hold it, pulled out of the drive-through and was burned when the coffee cup tipped over in her lap. She sued for damages.

What's the REAL verdict???

Answer on Page 7

QRG SEMINAR SERIES

In April **Barbara Artuso** attended the spring conference of the National Organization of Social Security Claimants' Representatives in Boston, Massachusetts. This four-day event featured seminars on topics of importance to those who represent social security disability claimants, including information on health-related topics and the best way to present successful claims for disability benefits.

QRG attorneys **Vince Quatrini, Tereasa Rerko, Ron Fonner and Pete Gough** conducted public service seminars for the recently displaced employees of Sony Technology Center, American Video Glass Company, Monsour Medical Center, and St. George Crystall.

Vince Quatrini recently served as course planner and lecturer for the Pennsylvania Bar Institute's educational program on workers' compensation in Pittsburgh, Mechanicsburg and Philadelphia. Vince also contributed his expertise in developing and writing the course manual, which has come to be known by everyone in the field as the "bible" of workers' compensation practice. Both the program and the manual have received national awards from the Association for Continuing Legal Education.

On May 17, 2006, attorney **Barbara Artuso** will present a Lunch & Learn to members of the Westmoreland Bar Association on the subject of social security disability and SSI claims. The seminar will cover recognizing, developing and presenting claims.

QRG COMMUNITY PARTNERS

Over the years, we have formed relationships with many community leaders, businesses and organizations. From time to time we will feature articles from people and organizations in our community about subjects which we feel may enrich your life. In this issue, we are featuring the Epilepsy Foundation Westmoreland/Central Pennsylvania and Louis Catalano, Jr., M.D., F.A.A.N., member of the EFWCP board and chair of its annual fundraiser.

LOCAL PHYSICIAN SPEARHEADS ANNUAL FUNDRAISER

When Westmoreland County neurologist Dr. Louis Catalano, Jr. organized his first sports auction to raise money for the Epilepsy Foundation Western/Central Pennsylvania (EFWCP), he was delighted to host 100 people and raise about \$10,000. Eleven years later, thanks to Dr. Catalano's vision, this fundraiser is now a nationally-recognized and emulated event, attracting hundreds of patrons and raising more than six times the original amount.

In 2003, the National Epilepsy Foundation took notice of the annual Westmoreland County Sports Dinner and Auction and its continued growth, and named Dr. Catalano the recipient of the national organization's 2003 Excellence in Fundraising Award.



Judy Painter, EFWCP Executive Director (left), Dr. Louis Catalano, Jr. and his wife Diana display the Excellence in Fundraising Award.

True to its history, the 2006 event is again shaping up to raise more money than the prior year, thanks to the efforts of Chairman Catalano, the assistance of his wife Diana, and 30 event committee members. More than 300 community and civic leaders are expected to join the Catalanos for an evening of food, fun and fundraising with a sports flavor at Ferrante's Lakeview Restaurant in Greensburg on May 24, 2006.

Proceeds from each year's event help support the EFWCP's services for people with epilepsy/seizure disorders. These programs and services include summer camp, support groups, emergency medication assistance, school and employment advocacy, free first aid and seizure recognition training, patient education events, and one-on-one consultations.

"This event is the tremendous success that it is because of the hard work of a great group of dedicated people," said EFWCP executive director Judy Painter. "Our volunteers, the event committee, and the entire staff of Dr. Catalano's practice work tirelessly to make sure that the night is great fun and one of our most fabulous fundraisers. We owe a tremendous debt of gratitude to Dr. Catalano and Diana for providing the vision and the leadership that make each event so memorable."

Eric R. Hargis, president and CEO of the National Epilepsy Foundation, added: "Because of Diana and Dr. Catalano's dedicated involvement in this event, literally thousands of people who would otherwise not have contact with the organization have become strong supporters. Physicians and professionals working in the Westmoreland County area who were formerly not aware of the EFWCP now refer patients to its programs."

Quatrini Rafferty Galloway has a long history of supporting the Sports Dinner and Auction. Vince Quatrini was one of the original committee members. Dick Galloway and Joyce Novotny-Prettiman currently serve on the event planning committee.

We at QRG hope that our friends will attend this year's Sports Auction and bid on the many unique sports items offered. Tickets are \$75 per person. To purchase tickets, donate, or for more information, contact Colleen Fulkerson at 1-800-361-5885 or ckaufman@efwp.org.

There are two things that are certain in life: death and taxes. While life ends at death, taxes do not!

Pennsylvania imposes a transfer inheritance tax on the transfer of resources from the person who died (decedent) to the intended beneficiary. This tax is assessed on virtually all property in the decedent's own name or owned jointly with others at the time of death. One notable exception is that there is no tax on life insurance benefits payable to the decedent's estate or to a named beneficiary.

Inheritance tax is calculated on the net fair market value of the property that is transferred, which is calculated by determining the market value of all assets at the time of death (for example, bank account balances, bond prices, stock trading values, etc.) less all allowable expenses of the estate including funeral expenses, debts of the decedent and probate costs. The current inheritance tax rate in Pennsylvania is 4.5% for children and grandchildren, 12% for brothers or sisters, and 15% for most other individuals. There is no tax on transfers between spouses.

If an estate is valued at over \$2,000,000, it may be subject to a federal estate tax. The federal estate tax increases as the taxable estate increases and is now as much as 47%. There is an additional federal tax called the Generation Skipping Transfer Tax (GST) imposed on transfers over \$2,000,000 made to persons at least two generations removed from the decedent (grandchildren or great-grandchildren).

In addition to the above estate taxes, the decedent can be subject to personal income tax on the income earned up to the date of death. That income is reported on a final personal income tax return filed with the Internal Revenue Service, the Pennsylvania Department of Revenue, and the local wage tax collector.

A similar tax must be paid on income earned by estate assets after death. The estate is obligated to file federal and state income tax returns for this income. Pennsylvania's income tax rate is a flat 3.07%, while the federal rate is graduated, beginning at 10% and increasing to 35%.

Further, beneficiaries who receive annuity payments or pension, IRA or 401(k) distributions will also be subject to personal income tax on all or a portion of these amounts.

To sum up, the tax issues that arise when a person dies can be complex and often require the assistance of specially qualified tax counsel. At QRG, we are proud to be able to offer this service to you. Please call us when you need assistance with tax issues.

HELP US KEEP IN TOUCH!

Our goal for our newsletter is to provide you with timely, interesting articles about the various areas of the law in which we practice. We want to make sure that it reaches you! If we have an error of any kind in your mailing address, please let us know. Maybe we have a spelling error in your name or address, or maybe you've moved and we missed it. Whatever it is, please contact us at 724-837-0080 or e-mail us at info@qrglaw.com so that we can get it right. And if you have friends or relatives that you think would enjoy our newsletter, please pass their names along to us as well!

Finally, let us know what topics you'd like explored in future issues of our newsletter. We welcome your input!

QRG PERSONAL NOTES

Jessi Rafferty, daughter of attorney **Dennis Rafferty**, will attend George Mason University School of Law this fall. Jessi previously served in the Peace Corps in Honduras. A graduate of Bucknell University, she enjoyed the recent success of both institutions in the NCAA March Madness Basketball Tournament.

Cassidy Chappell's fifth grade tournament basketball team won the recent White Oak Athletic Association Tournament. They also took second place in both the Franklin Regional and Norwin Community Athletic Association tournaments. Cassidy is the daughter of paralegal **Rhonda Chappell**.

Joe Roth, son of attorney **Barbara Artuso**, is the 2005 racquetball doubles champion for the state of Maryland. Joe is pictured here (left) with his doubles partner, Stephen Lee. Joe has been nationally ranked as a junior racquetball player.



Joshua Ross, son of client care representative **Terri Ross**, was awarded the Smalley Award at the Hempfield Area High School Band banquet. The Smalley Award is given in memory of Jeff Smalley, a former band member who passed away from leukemia in 1979. This award is given to the student who has gone a "touch above" and the recipient is personally chosen by band director Dr. Roderick T. Booker. Josh will travel with the band to San Antonio, Texas this spring.

Austin Fonner, son of attorney **Ron Fonner**, played on the Monroeville Assembly of God church basketball team, which finished the season undefeated. He was awarded best offensive and best defensive player in several games this season.

Amanda Kennison, daughter of legal secretary **Robin Kennison**, is finishing her freshman year at Allegheny College. She is a political science major and is involved in the college's student government.

Shelby Rerko Grundy, daughter of attorney **Tereasa Rerko**, was named to the honor roll at St. John the Baptist Catholic School in Scottsdale for the third grading period in a row.



WHAT'S THE VERDICT?

Continued from page 4

ANSWER: This is the famous McDonald's coffee case discussed by everyone, including jurors deliberating a verdict in cases where someone seeks compensation for injuries. If you said the McDonald's lady was awarded several million dollars, you're wrong.

Let's talk about the REAL facts of the case. In 1992, Stella Liebeck of Albuquerque, New Mexico, was a passenger in her grandson's car and was served coffee in a styrofoam cup at the McDonald's drive-through window. While the car was stopped, she attempted to remove the lid to add cream and sugar. As she did so, the contents of the cup spilled into her lap. She suffered third-degree burns across her groin, inner thighs and buttocks. She was hospitalized for eight days and underwent skin grafting and surgical removal of tissue. Ms. Liebeck sought to settle her claim for \$20,000, but McDonald's refused.

McDonald's admitted that it kept its coffee at a temperature between 180-190° to maintain optimum taste and had more than 700 prior claims for coffee burns. Coffee served at home is generally 135-140°. McDonald's knew that a burn hazard existed with any liquids served at 140° or above, that it enforced a company requirement that coffee be held at 185°, and that, while burns would occur, McDonald's had no intention of reducing the temperature of its coffee. McDonald's considered the number of people burned by its coffee to be insignificant.

So what was the REAL verdict? The jury awarded Stella \$200,000 in compensatory damages, which was reduced to \$160,000 because the jury found her 20% responsible for the spill. The jury also awarded her \$2.7 million in punitive damages (about two days of McDonald's coffee sales), subsequently reduced by the judge to \$480,000, even though the judge felt McDonald's conduct was reckless, callous and willful. After the judge's order, the parties entered into a post-verdict settlement, the amount of which is unknown.

So what's the moral of the story? Don't jump to conclusions when you hear about unusual jury verdicts. Some are exaggerated and many are totally false. In coming issues, we will explore some of these urban legends about court cases, real and imagined.

MEET THE STAFF

DONNA M. CARMEN AND MARGO A. RUSSELL

Legal secretary **Donna Carmen** has been with QRG for four years and is secretary for attorneys Vince Quatrini and Tereasa Rerko.

Donna and her husband, Bill, reside in North Huntingdon. Bill recently retired from his position as lab technician with Siemens Corporation. They have two sons, Chris, 29, who is a daylight shift supervisor for Scott Electric in Greensburg, and Ryan, 27, who works for Murrysville Golf Club as the Event Coordinator and Assistant Golf Pro.

Donna enjoys time with her family, reading, cooking, and exercising.

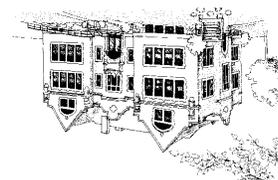
Margo Russell joined the firm in January 2005 and is paralegal for attorneys Tereasa Rerko and Pete Gough in the areas of social security disability and workers' compensation. Margo received her paralegal degree from Indiana University of Pennsylvania. She has 14 years of experience as a paralegal and previously worked with law firms in Greensburg and Butler.

Margo lives with her two children, Brittany and Matthew. She enjoys outdoor activities, playing pool, and spending time with her children.

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