



ILLINOIS STATE BAR ASSOCIATION

ELDER LAW

The newsletter of the Illinois State Bar Association's Section on Elder Law

An alternative: Public housing or housing vouchers

*By Donald A. LoBue; Springfield, Illinois**

Some attorneys in the elder law practice spend a considerable amount of time advising clients on how to qualify for Medicaid and Medicare. As a general rule, Medicaid does not come into play until a person with a medical condition needs assisted care.

If you know someone who can live independently but could use some help with housing costs, public housing or its Section 8 voucher system may be a good alternative. We all know that public housing has suffered a negative image for a long time in urban areas. However, public housing, especially in smaller communities, can be quite nice. Frequently the housing units offer security, access to social services, and community spaces which are not offered by private landlords. I submit that public housing or its voucher system may be a good fit for many of our elderly or disabled citizens.

Most Housing Authorities own and operate their own facilities for the elderly. They may also administer a voucher system sometimes referred

to as Section 8 Certificates. Vouchers permit eligible applicants to secure rental housing anywhere within the jurisdiction of the local Public Housing Authority (PHA).

A. Public Housing

The purpose of public housing is to provide decent, safe and sanitary rental housing for eligible persons, which include families, the elderly and persons with disabilities. To be eligible for public housing or Section 8 vouchers, the applicant must meet certain income requirements, prove they are a citizen or eligible immigrant and submit to a background check, to include a criminal history background search. Needless to say, a condition of one's application is that the individual provide the PHA appropriate written consents and releases for information. It is important to keep in mind that the PHA is under a legal obligation to report and verify income and assets.

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2010 Elder Law Quick Guide: Important numbers to remember

Compiled by Martin W. Siemer, Resch Siemer Law Office, LLC; Effingham, IL

2010 Medicare figures

Part A deductible per benefit period: \$1,100

Part A daily coinsurance, days 61 through 90 (per benefit period): \$275 per day

Part A daily coinsurance, 60 lifetime reserve days: \$550 per day

Part A daily coinsurance, days 21 through 100 in skilled nursing facility (per benefit period): \$137.50 per day

Part A reduced monthly premium (for voluntary enrollees who have 30-39 quarters of coverage): \$254

Part A reduced monthly premium (for voluntary enrollees who have 29 or fewer quarters of coverage): \$461

Part B standard monthly premium: \$110.50

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An alternative: Public housing or housing vouchers

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After confirming that the applicant is an eligible family, elderly or a disabled person, their income and assets are reviewed. As a general rule, the applicant pays 30 percent of the family's annual income in rent adjusted for allowable deductions, i.e. Total Tenant Payment (24 C.F.R. 5.628). Family is defined to include the elderly and disabled. Income eligible families must have income that is less than or equal to the income limit established by family size. The income guidelines for Sangamon County, effective March 19, 2009, are set forth below.

Annual income includes all earned income of the head of household, spouse and other adult members living in the household. Earned income of minors is not counted. However, the benefits or other unearned income of minors is counted in determining annual income. Examples of items counted as annual income are wages, alimony, child support, unemployment insurance, social security and income from a business. Examples of income exclusions are income from the employment of children under the age of 18 years, payments received for the care of foster children, inheritances, student financial assistance, amounts received for or in the reimbursement of the cost of medical expenses and income from special needs trusts.

There are various deductions that may be subtracted from annual income based on allowable family expenses and family characteristics. The remainder, after these deductions are subtracted, is called adjusted income. Adjusted income is the amount upon which rent is based.

There are five possible deductions, three are available to any assisted family, and two

are permitted only for elderly or disabled families. The three types of deductions available to an assisted family are a) a \$480 deduction for each dependent, b) child care costs and c) a disability assistance deduction. The two types of deductions permitted for families in which the head, spouse or co-head is elderly or disabled are a) an elderly-disabled family deduction in the amount of \$400; and b) the deduction for unreimbursed medical expenses. A detailed explanation of how income, deductions and rent are calculated is set forth in HUD Handbook 43.50.3: *Occupancy Requirements of Subsidized Multifamily Housing Programs* which may be found at the easily accessible Web site, <www.hud.gov>.

Annual income includes amounts derived from family assets. Although some people may disagree with me, an applicant can theoretically have unlimited assets so long as the assets do not cause him or her to exceed the income limits established for the area in which they live.

The regulations make a distinction between assets which are more or less than \$5,000. If a family's assets are less than \$5,000, the actual interest or income earned from those assets is the amount which is included in the annual income as income from assets. When the net family assets exceed \$5,000, different rules apply. The annual income is the greater of the following: a) actual income from the assets; or b) a percentage of the value of family assets based upon the current passbook savings rate as established by HUD. This is called imputed income from assets. At present, the passbook rate is set at 2 percent. See HUD 4350.3, Rev-1 at 5-7.

There is a continuing duty of the part of the tenant to keep the PHA informed of any changes in family composition, family income and employment. Leases will specifically state that rent, dwelling size and eligibility will be reviewed and certified on an annual basis. Tenant's rent can change due to an increase or decrease in adjusted income. Many PHAs establish a threshold of a \$100 per month or \$1200 annually before the tenant is obligated to disclose a change in their economic circumstances.

B. Vouchers (Section 8)

Vouchers are another form of subsidized housing. If an applicant qualifies for a voucher, they can use it to find their own housing within a given community to include a single family home, townhouses and apartments. The applicant is free to choose any housing within the PHA's jurisdiction that meets the PHA's Housing Qualifications Standards (HQS).

Under the voucher program, the tenant pays 30 percent of their adjusted income to the landlord and the PHA pays eligible landlords the difference between the tenant's 30 percent and the actual rent charged by the landlord. HUD sets fair cash market value for housing within a given community. By way of example, the monthly fair market rent established for the City of Springfield where the Landlord assumes the cost of utilities is as follows:

Efficiency	\$437
1 bedroom	\$514
2 bedrooms	\$664
3 bedrooms	\$867
4 bedrooms	\$967

The application process and income requirements for applicants to the Voucher Program are substantially the same as those for traditional public housing units as described above. In some circumstances, the voucher may be used to purchase a home. Regulations concerning this and other programs are set forth in 24 C.F.R. Part 92. ■

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Sangamon County, Illinois

FY 2009 Income Limit Category	Person 1	Person 2	Person 3	Person 4	Person 5	Person 6	Person 7	Person 8
Very Low (50%) Income Limits	\$23,100	\$26,400	\$29,700	\$33,000	\$35,650	\$38,300	\$40,900	\$43,550
Extremely Low (30%) Income Limits	\$13,850	\$15,850	\$17,800	\$19,800	\$21,400	\$22,950	\$24,550	\$26,150
Low (80%) Income Limits	\$36,950	\$42,250	\$47,500	\$52,800	\$57,000	\$61,250	\$65,450	\$69,700

Area Median Family Income (effective 03/19/09) is \$66,000.00.

2010 Elder Law Quick Guide

Continued from page 1

Part B monthly premium for those filing individual tax returns:

- \$110.50 (up to \$85,000 in AGI)
- \$154.70 (\$85,001 to \$107,000 in AGI)
- \$221.00 (\$107,001 to \$160,000 in AGI)
- \$287.30 (\$160,001 to \$214,000 in AGI)
- \$353.60 (over \$214,000 in AGI)

Part B monthly premium for those filing joint tax returns:

- \$110.50 (up to \$170,000 in AGI)
- \$154.70 (\$170,001 to \$214,000 in AGI)
- \$221.00 (\$214,001 to \$320,000 in AGI)
- \$287.30 (\$320,001 to \$428,000 in AGI)
- \$353.60 (over \$428,000 in AGI)

Part B monthly premium for married filing separate tax returns:

- \$110.50 (up to \$85,000 in AGI)
- \$287.30 (\$85,001 to \$128,000 in AGI)
- \$353.60 (over \$128,000 in AGI)

Part B yearly deductible: \$155

Part D enrollment period: November 15, 2009 through December 31, 2009

NOTE: Although the Medicare Part B premiums listed here reflect a 15% increase from the 2009 premium (which was the same as the 2008 premium), a hold-harmless

provision in the Medicare laws prevents Part B premiums from rising more than the cost of living increase in Social Security benefits. For 2010, there will be no cost of living increase in Social Security benefits. Thus, the only Medicare beneficiaries who should see an increase in their Part B premiums should be those who do not have their Part B premium withheld from their Social Security checks, those who pay a premium surcharge based on high income, or those who are enrolled in Part B for the first time in 2010. Further, there is action pending in Congress, awaiting a Senate vote, that would void the 15% percent increase in Part B premiums for all Medicare beneficiaries.

Federal poverty income limits

Persons in family unit	Poverty Limit
1	\$10,830
2	\$14,570
3	\$18,310
4	\$22,050
5	\$25,790
6	\$29,530
7	\$33,270
8	\$37,010

For family units with more than 8 persons, add \$3,740 for each additional person.

Income limits vary for Alaska and Hawaii. Income limits may be updated in early 2010.

Source: *Federal Register*, Vol. 74, No. 14, January 23, 2009, pp. 4199-4201.

Medicaid limits

Community Spouse Asset Allowance:

- 2009 -- \$109,560
- 2010 -- \$109,560

Community Spouse Maintenance Needs Allowance:

- 2009 -- \$2,739
- 2010 -- \$2,739

NOTE: This is the first time since the spousal impoverishment rules were enacted in 1989 that there will be no increase in the community spouse allowances.

Current Web address for Policy Manual and Workers Action Guide:

<<http://www.dhs.state.il.us/page.aspx?item=13473>>

Irrevocable Prepaid Burial Expense Limit:

- \$5,376, effective September 1, 2008
- \$5,537, effective September 1, 2009

Maximum deductions for qualified LTC insurance premiums

Attained Age before the close of the tax year	Maximum Deduction
40 or less	\$ 330
More than 40 but not more than 50	\$ 620
More than 50 but not more than 60	\$1,230
More than 60 but not more than 70	\$3,290
More than 70	\$4,110

Where the “rubber meets the road”: Advance directives in action

By Daniel M. Moore, Jr.; Moore, Susler, McNutt and Wrigley, LLC; Decatur, Illinois

You have helped a client plan ahead with advance directives such as the health care and property powers of attorney and possibly a living trust. Unless death is sudden, the efficacy of all three of these is going to depend upon the seamless-ness of the transition when time for action has arrived.

When the client is handed the completed documents she may say, with a sigh of relief, “There, that’s done!” and store them away for that time in the indeterminate future that

they will magically serve their purposes. Even if she had possessed the wisdom to broach the subject with her agent at this point, that person—especially if a close relative—is apt to react in an off-putting way about a time he would prefer to avoid contemplating.

The attorney who would serve this client well, should guide her toward some *advance* preparation for the employment of these advance directives at the appropriate time. This assistance should have as its primary goal, the smooth transfer of the reins of the client’s

personal and business affairs to the designated agent when the agent justifiably finds that transfer to be in the client’s best interest and the latter mistakenly does not.

That’s when the “rubber meets the road” and, to employ another metaphor, it can be a “sticky wicket.” Too often, at this critical time, perceptions of timely intervention will differ between agent and principal and negotiating this “sticky wicket” can be a test of patience and trust as the conscientious agent seeks to employ gentle but firm guidance.

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Often this will not be just a singular moment. Except for some less common physical impairments, capacity diminishes gradually; what this author calls “shades of gray matter.” The parties may find themselves at the “stick wicket” again and again as the principal’s needs expand. In our guardianship statutes this progression is recognized in the provision for limiting the guardian’s role to the least restriction upon the ward’s independence.¹

As important as this principal/agent exercise is, there is a cost-containment issue to consider. Especially since there are form powers of attorney, both for health care and for property, readily available to clients, reasonable fees for thoughtful creation of these advance directives are not easy to justify to many clients. If *more* time is to be spent after the documents have been approved and signed, it will even add to the billing difficulty.

The author’s firm frequently manages this through handing to the client, at signing, a User’s Guide to help the principal better understand what she may expect from the agent and the agent what he will need to do and when he will need to do it. The reader may access copies of these at the author’s firm’s Web site, <<http://www.decaturlaw.com>>.

A long paragraph toward the top of these User’s Guides deals with what may become the “sticky wicket” at the time the benefits of the advance directives are presently intended to be realized. Among other things, it suggests that the principal and agent play ‘what if’ as to a time the agent may believe he should assume responsibilities and the principal thinks she is just fine. From whom should they seek guidance at that point? Suggestions are given that it might be other close relatives, an attentive neighbor, the principal’s pastor, her primary care physician or the lawyer who had last served her. They are advised to record the results of their discussion in some way; by written memorandum, or audio or audio-visual transcription. Hopefully, at “sticky wicket” time, the record of their discussion can trigger some glimmer of recollection in the principal of then diminished capacity.

The Guide also suggests the more frequent the contact between principal and agent along the way, the better is the possibility the principal will recognize the wisdom of surrendering some control when that time comes. Too, it will help the agent be alert to his need to timely assume his responsibilities.

At a calendared reasonable interval after

the User’s Guide is handed to the client—perhaps 60 days—a follow-up letter should be mailed, stressing the importance you place on the suggestion in the User’s Guide being carried out. This not only can improve the possibility that the client will actually have the discussion with her agent, but also can serve as a justifiable marketing tool, through the caring it demonstrates.

While the foregoing paragraphs focus on an agent’s assumption of responsibilities under powers of attorney, similar problems can arise when a successor agent under a living trust finds that the conditions the trust settlor had established for the successor assuming trustee responsibilities have materialized. In this situation, as well as with the powers of attorney, it had been the client’s intention to provide a smooth transition so that she could be cared for in the manner she had specified.

Perhaps, with an agreement at the beginning as to just how the agent or successor trustee will decide he needs to start helping, there may be something tucked away in the principal’s brain, to be coaxed out at the time of need, that will make her more willing to accept help.

Then, for actually getting through the “wicket,” the agent or successor trustee may glean some help from the principal’s health-care provider, her lawyer, minister or other person with whom she has dealt regularly. Regrettably, the person who had been most trusted and named agent or successor trustee may become the one least trusted as dementia sets in.

Help can also be found from informative resources at the public library or on the Internet. One such resource is <www.helpguide.org>. While it deals with assisting the Alzheimer’s patient, its helpful suggestions are easily adaptable to other situations in which a person failing or refusing to recognize a progressing impairment, might be led to accept the help for which she had planned when she executed her advance directives. It might make the “ride” less bumpy, when the “rubber meets the road.”

The User’s Guide also references “The Caregiver Helpbook, Powerful Tools for Caregivers,” in particular Chapter Seven, available from Legacy Caregiver Services, <<http://www.legacyhealth.org/body.cfm?id=691>>. That book is particularly helpful to the agent trying, as he should, to involve the impaired principal as much as possible in the independence-limiting decisions that must be faced.

Even if the agent is successful in eliciting agreement from the principal, that will likely

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not be the end of the story. For the principal with diminished capacity, tomorrow is definitely another day and when the agent begins implementing the planned protections, the principal may express great surprise and resist it all. The conscientious agent will try again and yet again, if necessary. He knows that if he is unsuccessful, or if he incurs enough ire that the principal dismisses

him (as she may so easily do in the case of the health care power of attorney²), guardianship will ensue; just what the principal had hoped to avoid.

As for the principal's attorney, she or he will at least have the satisfaction of knowing the advance directives had been given the best chance of meeting the client's wishes. By encouraging the client to have the early

conversations with her agent and providing some suggestions for what was important to discuss, the agreeable transfer of decision-making to the agent had the greatest opportunity for success when the "rubber met the road." ■

1. 755 ILCS 5/11a.3(b)
2. 755 ILCS 45/4-6(a)

A note from the Editor...

By Tony DelGiorno; Rammelkamp Bradney, P.C.; Springfield, Illinois

In the October 2009 issue of the *Elder Law* newsletter, an article entitled "Til death do us part, or sooner: The family law attorney meets estate planning" author Michael Craven of Chicago stated:

The above statutes [disinheriting a divorced spouse] help only if a judgment is entered. If one dies while their [divorce] case is pending, the divorce action abates. The estranged surviving spouse will retain all the rights of a dutiful and loving spouse...

Recently, I received a letter-to-the-editor from Joseph Schuman of the firm of Schuman & Iselt, LLC in Chicago. He stated as follows in response to the foregoing:

We were recently consulted by a client who was concerned about her

son's marriage, and in particular about the possibility of a daughter-in-law sharing in a bequest to the couple should the client die the day before the divorce was finalized. We added a definition of "spouse" to the defined terms in her will.

When I refer to the "spouse" of a person, I do not include a person who, at the time of my death, is legally separated from the named person; or who is then living separately from the person with a view towards legal separation from or dissolution of the marriage to the person; or who is then a party to an action for the dissolution of the

marriage to the person.

Then we revised the rest of the document to ensure that all the daughters-in-law were referred to as "the spouse" of the sons and not by name.

We think we addressed the client's concern. By incorporating the language in our definitions and avoiding specific reference to the marriage in question, we also hope we minimized the extent to which we were adding fuel to the preexisting fire.

Mr. Schuman's comments may aide the practitioner in grappling with the issues raised in Mr. Craven's article. Regardless, it is an issue that is of importance to anyone preparing an estate plan. Thank you, Mr. Schuman, for your letter. ■

Upcoming CLE programs

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March

Tuesday, 3/2/10- Chicago, ISBA Regional Office—Partnership Law Update- 2010. Presented by the ISBA Corporation, Securities and Business Law Section. 11:45-2.

Wednesday, 3/03/10 – Webcast—Illinois' New Rules of Professional Conduct. Presented by the Illinois State Bar Association. 12-1.

Thursday, 3/04/10- Chicago, ISBA Regional Office—Family Law Skills—Practice Makes Perfect. Presented by the ISBA Family Law Section. 8:30-5.

Thursday, 3/04/10 – Webinar—Conducting Legal Research on Fastcase. Presented by the Illinois State Bar Association. *An exclusive member benefit provided by ISBA and ISBA Mutual. Register at: <<https://www1.gotomeeting.com/register/812110961>>. 12-1.

Friday, 3/05/10 – Chicago, ISBA Regional Office—Administrative Adjudication in the City of Chicago and other Municipalities. Presented by the ISBA Administrative Law Section; co-sponsored by the ISBA General Practice Section, Small Firm & Solo Sec-

tion Council. 8:30-5:15.

Thursday, 3/11/10- Webcast—Bankruptcy: Tips from the Bench. Presented by the ISBA Commercial Banking and Bankruptcy Section. <<https://isba.fastcle.com/store/seminar/seminar.php?seminar=3562>>. 12-1.

Thursday, 3/18/10- Webcast—Collaboration Tools: Paperless Communication with Clients. Presented by the ISBA Legal Technology Section. <<https://isba.fastcle.com/store/seminar/seminar.php?seminar=3563>>. 12-1. ■



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