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PROPER PLANNING MAY CREATE PEACE OF MIND



August 2003

Derivative Claims Affect Public Assistance

Allocating settlement proceeds to a spouse or minor child's derivative claim presents unique issues when the spouse or child receives public assistance. Receipt of proceeds can result in loss of benefits and create a cause of action for legal malpractice.

THE TALE:

The trial lawyer represented a client, age 48, paraplegic, unable to return to his former occupation. The client lived with his wife and 10 year old son in a rental apartment. They had no assets. The client received Social Security Disability Insurance (SSDI) benefits and Medicaid; the spouse and child received Medicaid and Food Stamps. Only Medicaid and Food Stamps limited the family's assets and income. After we met with the family and confirmed the public assistance we advised them of the impact allocating proceeds to either the spouse or child could have on the family. In Medicaid and SSI "deeming" is a concept where assets and income of a parent or spouse are treated as available to a minor child or ineligible spouse when determining eligibility. If the trial lawyer had

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distributed proceeds to either the spouse or child, the family would exceed the financial eligibility requirements and lose their benefits. With proper planning we successfully assisted the family in maximizing the benefits of the lawsuit proceeds so they could purchase a home and handicapped equipped vehicle, provide the spouse with respite and the injured spouse with private duty medical assistance, satisfy their debts, take a well needed family vacation, and preserve the remaining assets in a special needs trust for the client. The family will now have peace of mind, dignity and retain their government assistance.

THE TIP:

When the client has a spouse and/or minor child ask whether each family member receives a cash benefit, medical benefits, or HUD-housing from the government. If the client says "yes" advise the client to immediately schedule a consultation with our office. We will obtain proof of the government benefit provided by SSA, HUD or, DCF. We will advise them of the options and assist them in preserving their government benefits while protecting the settlement proceeds.

ANNOUNCEMENTS:

Stephanie has been elected Chair of The Florida Bar Elder Law Section as of July 1, 2003.

Our firm is a proud Business Patron of the Eagle Program of the Academy of Florida Trial Lawyers.

Meet The Staff

Rose Skinner - CLA

- Special Needs Trusts
- Medicaid & SSI
- Nursing Home Resident Rights
- Estate Planning

Karen Verna - CLA

- Guardianship
- Probate
- Trust Administration
- Court Appointments

Myrna Hambro-Secretary

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