

MSBA ELDER LAW SECTION E-NEWSLETTER
May 12, 2009

E-Newsletter Editorial Staff:

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STATE AGENCY APPLIES HIGH BURDEN OF PROOF
TO ESTABLISH THAT GIFTS TO FAMILY MEMBERS WERE NOT MADE TO
BECOME ELIGIBLE FOR MEDICAL ASSISTANCE

Submitted by Julian J. Zweber

Despite the Appellant's argument that a pattern of giving birthday and Christmas presents to family members which started in 1991, proved that similar gifts to family members after February 8, 2006, were made exclusively for a purpose other than to become eligible for medical assistance benefits, DHS Judge AmyLynne Hermanek concluded that the appellant failed to produce evidence "to meet the especially high burden of proof imposed by the law [Minn. Stat. 256B.0595, subds. 3, 3b, 4, or 4b, which describe the exceptions to the usual asset transfer penalty rules]."

The Appellant contended that when gifts to family members were made, the Appellant "lived frugally on her social security and savings, and that the insubstantial individual gifts did not substantially reduce her overall wealth given her minimal spending on her own needs, and that she was not anticipating nursing home placement in any case." In the Judge's Conclusions of Law, she noted that "[I]t cannot be said that the need for long-term care services was completely unanticipated. . . . The evidence before me does not conclusively establish that the gifting was exclusively for another purpose, regardless of the clear history of the gifting. Therefore, the \$8530 in family gifts made during the period February 8, 2006 through October 2008 was properly counted by the county agency as an improper transfer."

The complete text of the Agency Decision, *In the Appeal of D.E. for Medical Assistance Long-Term Care, Docket No. 107444* (Appeal Data Base ID #39750, entered in the Appeal Data Base on April 25, 2009), with all information to identify the parties or the county of origin redacted, is available at:
<http://appeals.dhs.state.mn.us/AppealsDetail.aspx>.

If the website link above does not work, search the internet for the "Fair Hearings Decision Database," click on "DHS|Appeals," enter "gifts" in the Search Text window and narrow the search to begin 4/24/2009, and end 4/27/2009.

ELDER LAW NEWS

Protect programs that help seniors

<http://www.inforum.com/event/article/id/240060/>

SOCIAL SECURITY Q AND A: What to bring to an appointment

<http://www.grandforksherald.com/event/article/id/118091/>

Senior Companion/Foster Grandparent: Tri-Valley recognizes volunteers' dedication

<http://www.crookstontimes.com/news/x1194160767/Senior-Companion-Foster-Grandparent-Tri-Valley-recognizes-volunteers-dedication>

Do the Best Nursing Homes Have to Be Expensive?

<http://health.usnews.com/blogs/comarow-on-quality/2009/05/04/do-the-best-nursing-homes-have-to-be-expensive.html>

Seniors at home in co-housing

http://www.usatoday.com/money/economy/housing/2009-05-03-co-housing_N.htm

Workshops aim to educate seniors on legal matters

<http://www.albertleatribune.com/news/2009/may/02/workshops-aim-educate-seniors-legal-matters/>

Warning on Common Pain Pills

<http://newoldage.blogs.nytimes.com/2009/05/06/experts-warn-against-long-term-use-of-common-pain-pills/?partner=TOPIXNEWS&ei=5099>

Examining the Impact of Alzheimer's Disease in America

<http://www.hbo.com/events/alzheimers/census.html>

Elderly Workers Need For Jobs

<http://www.cnn.com/video/#/video/us/2009/03/21/tuchman.elderly.workers.cnn?iref=videosearch>

UPCOMING EVENTS AND CLE PROGRAMS

Medical Assistance and Long Term Care 2009

Video

May 29, 2009 - Duluth

Contact Information: <http://www.minncle.org/SeminarsSearch.asp> or 1 800-759-8840.

The Basics of Elder Law: A Critical Course for Every Attorney Whose Clients are Getting Older

Live Presentation

May 18, 9:00 am

Contact Information: <http://www.minncle.org/SeminarsSearch.asp> or 1 800-759-8840.

Probate & Trust Law Section Conference

June 8 - 9, 2009

Saint Paul RiverCentre

Contact Information: <http://www.minncle.org/SeminarsSearch.asp> or 1 800-759-8840.

Elder Law Institute

October 8-9, 2009

Minnesota CLE Conference Center

ELDER LAW SECTION ACTIVITIES

ELDER LAW SECTION ANNUAL MEETING AND GOVERNING COUNCIL

MEETING: The annual meeting of the Elder Law Section will be on June 9, 2009 at 1:00 p.m. at RiverCentre in St. Paul (following the Probate and Trust Law Annual Conference). The Annual Meeting also serves as the next Governing Council meeting.

MA COMMITTEE MEETING: The next MA Committee meeting will be at 3:30 p.m. on Tuesday, June 16, 2009, at the MAO Offices, 2021 E. Hennepin, Suite 200, Minneapolis. Topics for the meeting may be submitted to MA Committee Chair, Cathryn Reher, at creher@mnelderlaw.com, or faxed to 952-542-9201. For directions, or to attend by phone, please contact Tracie Fenske with Long, Reher & Hanson, P.A. at 952-929-0622.

VULNERABLE ADULT COMMITTEE MEETING: The next meeting of the Vulnerable Adult Committee will be Thursday, July 30, at Noon, at the offices of Pearson, Randall, Schumacher & LaBore, P.A., 100 S. 5th Street, Suite 1025, Minneapolis, 612.767.7500. Contact co-chairs Ken LaBore at klabore@prslegal.com or Joel Smith at joel@koslaw.com for more information.

MINNESOTA CASES

There are no Minnesota Cases to report this week.

STATUTES, REGULATIONS, BULLETINS

There are no Statutes, Regulations or Bulletins to report this week.

DON'T FORGET THAT THE ELDER LAW WEBSITE IS A GREAT RESOURCE. Here's what you can find on the Website: Links under "What's New" to the DHS Health Care Programs Manual, the updated Income and Asset Eligibility Figures for Minnesota Health Care Programs, the DHS Bulletin on treatment of uncompensated transfers, the Minnesota Bankers Association Compliance Bulletin on Powers of Attorney, and a legislative summary; Practice Links to organizations such as NAELA, ABA Commission on Law and Aging, Minnesota Senior Federation; Links to Federal and State Government Agencies, Statutes, and Regulations; Meeting Notices, Listings of Officers and Council Members, Section Bylaws, and more.

To access the ELDER LAW SECTION WEBSITE

Click here: <http://www2.mnbar.org/sections/elder-law/index.asp>

Please send eNewsletter contributions by noon on Saturday of each week to Suzy Scheller at sscheller@prslegal.com.

If you do not wish to receive this eNewsletter, send your request to be removed from the mailing list to Kim Basting at kbasting@statebar.gen.mn.us.