



ELDER LAW AND ESTATE PLANNING

Joseph Karp

QIT can protect Medicaid eligibility if applicant's income over cap

Question: I'm researching Florida Medicaid eligibility for my mom. She's in rehab but will need long-term care soon. Between her Social Security and my late father's pension, her monthly income is \$3,100. I hear the maximum she can have is \$2,250. Do we have any recourse for her Medicaid eligibility? Can we just tell the pension provider that she doesn't want the money? Without the pension her income falls under \$2,250.

Answer: First, be aware that monthly income is just one of many criteria Florida considers when assessing eligibility. To get the full scope of requirements, check out my website. Second, are you sure you've included all of your mother's income? Income includes earned and unearned gross income and, if applicable, dividends, interest, net rental payments, annuity payments (whether or not taxable), and any Medicare deductions from Social Security.

Florida is an "income cap" state and you are correct that the current cap is \$2,250. The good news is that there is a solution for the excess income issue: establishing a Qualified Income Trust (QIT, also known as a Miller Trust). The Qualified Income Trust would be composed solely of your mother's excess income and would allow her to qualify for benefits,

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assuming she meets all the other criteria. She could draw \$105 per month from the trust for personal expenses. A QIT should be created by a Florida Bar Certified Elder Law Attorney.

I am assuming that your mother is competent to execute a QIT. If not, her agent under her Durable Power of Attorney could do so, if the instrument grants that power to her agent. I suggest you examine your mother's Durable Power of Attorney as soon as possible to determine if her agent has the authority to take all the necessary steps, including creating a QIT, to help establish her Medicaid eligibility going forward.

Joseph Karp, a member of the Florida and New York Bars, is a Nationally and Florida Bar Certified Elder Law Attorney and founder of The Karp Law Firm, located in Palm Beach and St. Lucie counties. The firm assists clients with wills, trusts, Medicaid and VA benefits planning, special needs planning, asset preservation, probate/trust administration and estate litigation.