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Caregiver Child Exception to Transfer of a Home - You need to have good facts

September 14, 2011 by [Deirdre Wheatley-Liss](#)



A recent appeals court case underscores the importance in New Jersey of being able to factually prove that a child in fact provided care to a parent for the transfer of the home to that child to be an exception to the Medicaid transfer rules.

Generally speaking, a transfer of assets without compensation within 5 years of an application for Medicaid will cause a penalty period to be assessed. One very important exception to this is the "Caregiver Child Exception". **The Caregiver Child**

Exception basically indicates that if the child has (1) resided in the parent's home for at least 2 years, and (2) provided a level of care to the parent that allows the parent to stay at home and not have to enter into an assisted living or nursing facility, then the transfer of the home to that Caregiver Child does not create a penalty for Medicaid purposes. See N.J.A.C. 10:71-4.10(d).

The recent case of [V.P. v. Dept. of Human Services](#), decided by the New Jersey Appellate Division September 2, 2011, underscores **the importance of being able to prove that the Caregiver Child actually provided assistance to the parent, which allowed the parent to remain at home instead of needing to enter a care facility.** In this case, the Caregiver Child brought a variety of witnesses to testify to the fact that the Caregiver Child actively helped the parent. **The key lesson here is that if the family is planning on potentially using the Caregiver Child exemption to allow the caregiver child remain in the home after the parent needs to enter the nursing home, then the family must maintain credible and substantiated evidence of the fact that the child is in fact providing care to the parent.**

[Elderlawanswers.com](#) has kindly provided a summary of this important case:

A New Jersey appeals court rules that the transfer of a Medicaid applicant's house to her caregiver son is not subject to a Medicaid penalty period because it falls within the caregiver child exception. [V.P. v. Dept. of Human Services](#) (N.J. Sup. Ct., App. Div., No. A-2362-09T1, Sept. 2, 2011).

V.P. lived with her son, R.P. Following a stroke, she entered a nursing home, transferred her house to her son and applied for Medicaid benefits. The state determined V.P. impermissibly transferred her home and was subject to a penalty period.

V.P. appealed, arguing her house was not a countable asset because the transfer fell within the caregiver child exception. At a hearing, several family members and V.P.'s doctor testified that R.P. helped V.P. walk, bathe, and cook, among other things. The administrative law judge (ALJ) found the witnesses credible and determined the caregiver child exception applied. However, the state's



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Medicaid director rejected the ALJ's decision and concluded V.P. needed only normal support services, so the transfer was not eligible for the caregiver child exception. V.P. appealed.

The New Jersey Superior Court, Appellate Division, reverses, holding that V.P. is entitled to Medicaid benefits with no penalty period. The court rules that the director did not demonstrate that the ALJ's findings were arbitrary and capricious. According to the court, "the credible evidence in the record supports the ALJ's finding that V.P needed, and R.P. provided, special care and attention essential to her health and safety."

For the full text of this decision in PDF, go to: <http://www.judiciary.state.nj.us/opinions/a2362-09.pdf>

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