

Elder Law and Special Needs Planning

February 2024 Newsletter



Driving Inclusively: The New Law Benefiting Autistic Drivers in New Jersey

In 2024, autistic motorists in New Jersey, as well as their parents/guardians, will be able to request that their autism diagnoses be notated on their driver's license. This notation will appear as a code in the "restrictions" column of the driver's license. This new law, originally passed in May of 2023, is intended to alert police officers of the driver's disability during traffic stops. Additionally, New Jersey police departments will be provided with written guidance, instructing officers how to effectively communicate with people with autism or other disorders involving speech or language.

National autism research reveals that persons with autism and other developmental disabilities are more likely to encounter law enforcement than the general population. As such, autism advocates in New Jersey have embraced the new law, suggesting that it may prevent conflict and misunderstandings during roadside interactions between police and autistic drivers. From their perspective, the license notation gives autistic drivers a direct and simple way to communicate their diagnosis to an officer. Further, advocates believe formal written guidance will provide police with effective tools to manage the interaction safely and sensitively.



Eligible New Jersey drivers will be able to elect for the notation to be included on their driver's license beginning December 1, 2024. We recommend checking the New Jersey Department of Motor Vehicle website for the latest updates as the implementation date for the new law approaches.

In addition, certain police departments, such as in Hamilton Township, currently offer autism awareness stickers, to be placed on the cars or homes of people with autism or other developmental disabilities. These stickers alert first responders that an autistic or developmentally disabled person may be present. We recommend you contact your local police department to find out if your municipality offers autism awareness stickers.

The Special Needs attorneys at Mandelbaum Barrett PC are here to answer any questions you may have.



New Law Creates “Presumptive Eligibility” Under Medicaid’s Home and Community Based Services Waiver Program

All Medicaid programs offered in New Jersey fall under the umbrella “NJ Family Care”. NJ Family Care consists of several different Medicaid programs, catering to both institutional services (nursing home and other long-term care facilities) and home and community-based services. Each Medicaid program has its own eligibility criteria, each of which may take into consideration the applicant’s income, resources (assets), disability status, or any combination thereof.

On January 16, 2024, Governor Murphy signed into law Bill A4049/S3495, which provides for “presumptive eligibility” to individuals applying for (or intending to apply for) the home and community-based services program, as well as services through the program of all-inclusive care for the elderly. This historic legislation makes New Jersey one of only a few states that have adopted similar policies extending presumptive eligibility to home and community-based Medicaid applicants. We anticipate the roll-out of this new law will take some time, given the State’s need to secure federal financial participation.

Currently (as we await the implementation of this new legislation), an individual seeking Medicaid benefits through the home and community-based services program must first meet all eligibility criteria before submitting their Medicaid application to the applicable county welfare agency. Processing times vary from county to county, and even from application to application depending on the complexity of the individual’s circumstances. Those who have gone through this process know that it can and often does take several months before the county renders a decision (approval or denial) on the application.

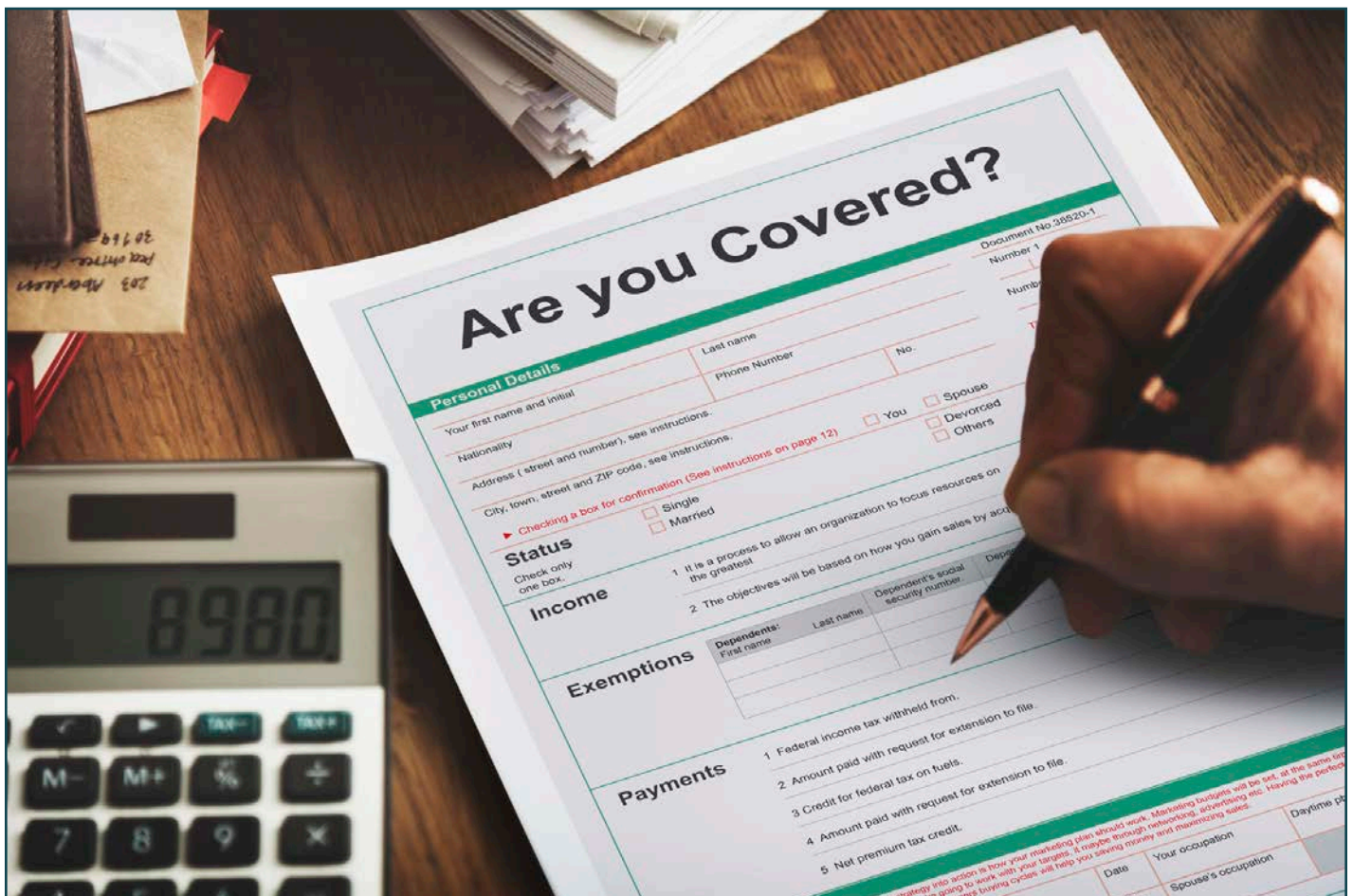


To make matters worse, the lengthy period between the submission of a Medicaid application and receipt of a decision from the county welfare agency can pose several risks to the Medicaid applicant due to their continued residence at home (sometimes without supports in place), limited financial resources (and/or income) and declining physical (and/or mental) health. The presence of these three risk factors can result in a “perfect storm”, especially if the individual is isolated from friends and family who cannot monitor their condition.

However, New Jersey will soon be extending full Medicaid benefits to individuals seeking enrollment in the home and community-based services program before their Medicaid application is submitted and processed (assuming certain conditions are met). In other words, county welfare agencies will now be able to make a conditional offer of benefits to home and community-based services applicants after only a superficial review of the applicant’s circumstances, provided the review results in a determination that the applicant is likely qualified to receive benefits. Under the new law, applicants who are presumed eligible will be expected to submit their Medicaid application (and required “proofs”) to the county welfare agency no later than the end of the month following the month in which presumptive eligibility is granted.

This new legislation seeks to bridge the “care gap” for many who wish to live out their later years at home rather than in a facility. The legislation also seeks to address some of the historic barriers to receiving Medicaid benefits in the community, a much-welcomed change in a post-pandemic world, where concerns about long-term care facilities are at an all-time high.

If you or a loved one are considering applying for Medicaid through the home and community-based services program and would like to discuss pathways to eligibility, **please contact the Elder Law Department at Mandelbaum Barrett to schedule a consultation with one of our elder law attorneys.**





A New Year's Upgrade to Prescription Benefits for the Elderly and Disabled

New Jersey has several programs to assist seniors with the costs of their prescription medications. For instance, the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program, created in 1975, provides prescription medications for low-income elderly and disabled persons at reduced cost. Senior Gold, created in 2001, offers prescription benefits to seniors whose earnings exceed the cap for the PAAD program.

As of January 1, 2024, eligibility for both programs have been broadly expanded to allow thousands of new recipients to qualify.

Pursuant to the new law, PAAD has raised income eligibility to people earning up to 400% of the federal poverty level. This allows single seniors earning up to \$52,142, as well as elderly couples who earn up to \$59,209, to qualify for benefits. In total, this change is expected to add 1,500 new recipients to the PAAD program.

Further, those earning above 400% of the federal poverty level will now qualify for benefits under the Senior Gold program. This allows single seniors earning between \$52,142 and \$62,142, or elderly couples earning between \$59,209 and \$69,209, to be eligible for benefits. This change is expected to add 24,000 new recipients.

The new law allocates \$6 million for the promotion of the respective programs and requires pharmacies to display promotional materials for the programs at the counter. It also requires pharmacies to assist those who are ineligible for PAAD to enroll in Senior Gold.

Recipients of Social Security Disability benefits between the ages of 18 and 64 are also eligible for either program.

Considering the exorbitant costs of pharmaceuticals and the impact this has on the elderly and disabled population, it is important to be aware of these programs and the expanded eligibility criteria that enable more individuals to qualify.

The Elder Law and Special Needs team at Mandelbaum Barrett PC are available to answer any questions regarding these programs and other governmental benefits related to long term care.



Mitigating the Impacts: Sunsetting the Tax Cuts and Jobs Act

The Tax Cuts and Jobs Act (TCJA) took effect on Jan. 1, 2018, and impacted personal income taxes, small businesses, estate tax rules, capital gains rules, special needs accounts, and much more. The TCJA is scheduled to **sunset** at the end of 2025. This will lead to significant changes for taxpayers. So, are there ways to avoid potential tax impacts to you or your loved ones?

[Read on to learn more.](#)



Gift Now and Get the Benefit of the Current Gift Exclusion

One of the most discussed effects of the TCJA sunsetting is the slashing of the federal estate and gift tax exclusion to pre-2018 levels, as adjusted for inflation. The current exemption is \$13,610,000 per individual. Starting in 2026, it will go down to the 2017 exemption of \$5,490,000 per individual (as adjusted for inflation). This drop is potentially a big hit for the heirs of anyone who passes away after Jan 1, 2026.

The estate and gift tax exclusion is essentially a credit applied to gifts made by a person while they are alive or a person's total taxable estate upon their death to minimize how much will be subject to federal tax. So, for example, under current rules, if a person has a total taxable estate of \$8 million and made \$1 million of gifts in their lifetime, their estate can apply a \$9 million exclusion or "credit," and not owe taxes. However, if this person passes away in 2026, their estate will likely suffer tax consequences as there would not be a credit sufficient to cover an \$8 million taxable estate (if the gifts were made before 2026, they may be covered, as explained below).

It is possible to mitigate this potential scenario in several ways. One of them is making large gifts before December 31, 2025, while the gift tax exclusion amount in effect is at record highs. The IRS has stated that this practice won't harm estates after 2025. Specifically, IRS regulations have a special rule that allows an estate to take an estate tax credit using the greater of the exclusion applicable to gifts made during life, or the exclusion in effect on the date of death. The result is that if gifting makes sense in your situation, you can make large gifts up to the exclusion limits until 2025 without worrying that the temporarily higher tax benefits will be lost if you pass away after 2025.

And don't forget that a person can gift up to \$18,000 per year (or \$36,000 per year for couples who file jointly) to as many people as they wish. These gifts don't count toward their lifetime exclusion. So, for a couple with three children and six grandchildren, they can gift these individuals \$162,000 per year without touching their exclusion. This can be an easy way to transfer wealth to the next generation tax-free.

Maximize Gifts to 529 Plans

Another option to get ahead of the TCJA ending is to contribute the maximum amount of money to 529 plans set up for children and grandchildren (and other selected categories of people). Current law allows up to five years of annual gifts to a 529 plan in one shot. And, starting in 2024, distributions from 529 accounts will no longer be counted as income to the student when applying for federal student aid.

So, if you want to give funds to loved ones but have concerns about how it may be spent, you can deposit \$18,000 (\$36,000 for a couple) into a 529 account for their benefit. Current rules also allow you to make an accelerated gift of up to five years' worth of gifts to a 529 account in one year and spread out the gift tax liability over five years. If you gift less than the annual gift tax-free amount, there is no tax liability.

The result is that a couple could gift \$170,000 now to a 529 account. They would, however, need to file a gift tax return and elect the five-year treatment. One caveat to this option is that the gift giver must survive beyond the five-year period for the gifts to be fully excluded from their taxable estate. To ensure this is done correctly, it is essential to consult with a qualified tax professional. However, if done properly, it is an effective way to reduce a person's taxable estate.



Consider an Irrevocable Life Insurance Trust

Another potential way to leave money to loved ones and not increase your taxable estate above the impending lowered exclusion amount is to purchase a policy owned by an irrevocable life insurance trust. The benefit paid to your beneficiaries is also potentially tax-free income for them. This planning technique should not be undertaken without the counsel of an attorney, as it may have other implications for your personal situation.

Max Out ABLE Account Contributions

An ABLE account is a savings program run by the state for certain individuals with disabilities. Beneficiaries may use ABLE account funds to pay for qualified expenses tax-free. ABLE accounts are also disregarded as assets when determining if a person qualifies for Supplemental Security Income (SSI) and certain other means-tested federal benefits. If your loved one qualifies for an ABLE account, you may be able to improve their quality of life while reducing your future taxable estate. You can contribute up to the annual gift tax exclusion amount.

Furthermore, the TCJA allows an employed beneficiary who does not participate in an employer-sponsored retirement plan to contribute up to 100 percent of their earned income to their ABLE account up to the prior year's poverty line amount for a one-person household (\$14,580 as of 2024).

So, ABLE accounts can be built up quickly where a parent makes a gift contribution and the disabled child also contributes their earned income. The child, if over 18, may also be able to claim the Saver's Credit on their tax return for up to \$2,000 of contributions they made to their ABLE account. But, as with other TCJA provisions, these benefits will end on December 31, 2025.

Not all these options may be appropriate for everyone, and it is always prudent to make any financial planning decisions with the advice and counsel of a professional. However, the sooner you act, the more options you may have before the TCJA sunsets.

The Elder Law attorneys at Mandelbaum Barrett PC are available to answer any questions you may have.



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2024 Standard Protections for Spouses of Medicaid Applicants

Each fall, the Centers for Medicare & Medicaid Services (CMS) renews the federal guidelines that seek to protect individuals whose spouses are applying for or receiving Medicaid long-term care benefits.

These protections, known as the **Spousal Impoverishment Standards**, help to support the financial well-being of seniors who continue residing at home while their spouse on Medicaid lives in a long-term care facility, such as a nursing home.



Qualifying for Medicaid Long-Term Care Benefits

Long-term care is prohibitively expensive for many, so a large share of adults aged 65 and older rely on Medicaid to help cover the costs.

To qualify for Medicaid long-term care benefits, however, one must generally have very limited resources. In most states, the asset limit is set at \$2,000. (Certain assets, such as personal belongings and the applicant's primary residence, do not count toward this limit.) The applicant's income typically goes to the nursing home as well, with some exceptions.

So, what happens if a person who qualifies for Medicaid long-term care is married? How can their healthy spouse afford to remain on their own at home? This is where the Spousal Impoverishment guidelines help.

2024 Spousal Impoverishment Figures

Note that most of the latest figures, outlined below, are effective January 1, 2024.

Community Spouse Resource Allowance (CSRA)

A spouse who continues living at home while their partner receives long-term care coverage through Medicaid can keep up to \$154,140 in assets starting in 2024.

The healthy spouse, or so-called "community spouse" then has a minimum amount of assets to live on without rendering their Medicaid spouse ineligible for benefits. This special protection is known as the Community Spouse Resource Allowance (CSRA). The maximum CSRA generally rises each year; in 2023, it was \$148,630.

Meanwhile, according to federal law, no state can set the minimum CSRA below \$30,828 as of 2024.

Monthly Maintenance Needs Allowance (MMNA)

In addition to CSRA, the federal government offers another level of protection for the community spouse: the Monthly Maintenance Needs Allowance (MMNA).

The MMNA ensures that the healthy spouse who continues to live in the couple's home maintains a certain amount of monthly income while their partner receives their Medicaid long-term

care coverage. (Learn more about the ins and outs of MMNA.)

In 2024, the maximum MMNA will be \$3,853.50 (up from \$3,715.50 in 2023). Again, this is the most in monthly income that the community spouse can keep while their spouse lives in a long-term care institution. If the healthy spouse does not make enough income to live on, this allowance comes from the income of the spouse on Medicaid.

Note that the minimum MMNA for 2024 can vary depending on your state. Alaska and Hawaii typically have slightly higher minimums. The federal government updates the minimum MMNA each July.

A Note on Income Cap States

Certain states have in place a Medicaid income cap. If you reside in one of these income cap states, you will not qualify for Medicaid if your income equals more than \$2,829 (in 2024) – unless you have a certain type of trust in place. This trust, known to many as a Miller Trust, must hold any income you receive that is above that cap.

As of 2023, the 23 income cap states were Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Iowa, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, New Jersey, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, and Wyoming.

Home Equity Limits

As mentioned above, Medicaid does not consider the primary home of an applicant as a countable asset, unless the applicant's equity interest in their home is above a certain amount.

Your home equity equals your home's value minus the sum of any loans you owe on the home. In 2024, the home equity limit is set to \$713,000. (Some states choose to raise this limit to \$1,071,000.)

Work With Your Elder Law Attorney

Planning for Medicaid and navigating the Medicaid application process can be daunting. **The Elder Law attorneys at Mandelbaum Barrett PC are here to help and answer any questions you may have.**

Access the 2024 **Spousal Impoverishment Rules** via the Medicaid website.

Securing Food Stamps as a Person with Disabilities

For many people with disabilities, the Supplemental Nutrition Assistance Program (SNAP) – aka food stamps – is an invaluable lifeline. Nearly **14 million people** with disabilities receive vital nutrition assistance through SNAP, according to the Center on Budget and Policy Priorities.



What Benefits Does SNAP Provide to Disabled Individuals?

SNAP provides important nutritional support for many people, including those with disabilities who often live on lower, fixed incomes. The federal government pays the full cost of SNAP benefits. However, the individual states administer the program locally.

SNAP is available in the 50 states, the District of Columbia, Guam, and the Virgin Islands. If you wish to apply for SNAP benefits, you must do so through your **local office**.

Who Qualifies for SNAP Under “Disability” Rules?

Disabled persons or families with a disabled member have different eligibility rules than other low-income populations applying for SNAP. There are three main criteria a person must meet to qualify for SNAP benefits as a person with a disability (with some exceptions):

1. The person’s disability must meet one of the following criteria:

- Receipt of federal disability or blindness payments under the Social Security Administration, **including Supplemental Security Income** (SSI) or Social Security disability or blindness payments.
- Receipt of state disability or blindness payments based on SSI rules.
- Receipt of a disability retirement benefit from a governmental agency because of a permanent disability.
- Receipt of an annuity under the Railroad Retirement Act while also eligible for Medicare or disabled under SSI.
- Being a totally disabled veteran.
- Being the surviving spouse or child of a veteran who receives VA benefits and is classified as permanently disabled.

2. The applicant must also meet the net income test. For eligibility limits ending September 30, 2023, this means that their net household income (remaining income after all allowed deductions) must be less than or equal to 100 percent of the poverty line for a household of comparable size. For a household of one, this threshold is currently \$1,133 per month.

However, if all members of a household are receiving Temporary Assistance for Needy Families, SSI, or (in some places) other general assistance, the household may be “automatically” eligible for SNAP because of already determined eligibility for other means-tested programs.

3. The person with a disability meets a resource limit of no more than \$4,250 in countable resources.

How Much SNAP Can a Person Receive?

The maximum SNAP award depends on household size. The government expects that households will use 30 percent of their own resources to purchase food. This is taken into consideration in the ultimate benefit amount. A household of one person can get a maximum of **\$281 per month** in SNAP benefits.



SNAP Work Requirements

Most applicants that apply for SNAP are subject to work requirements. However, disabled individuals are exempt from this requirement and do not need to work a certain number of hours per week to qualify for SNAP.

Other Issues to Consider

SNAP is not available to individuals with an undocumented immigration status. This benefit is currently limited to U.S. Citizens and permanent residents. However, non-citizens must have lived in the U.S. for a minimum of five years, be receiving disability benefits, and be under 18. Income and resource limits still apply.

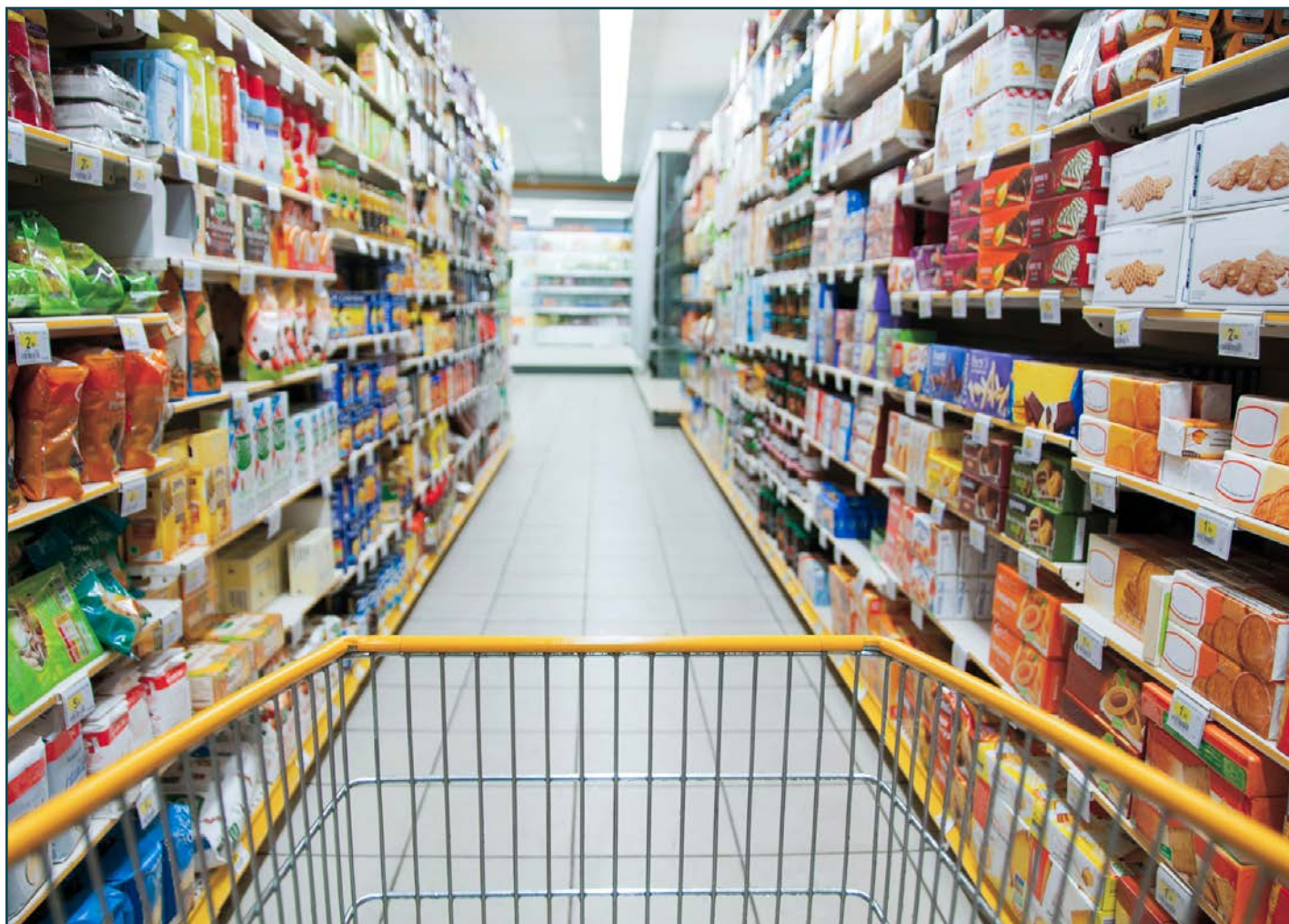
Denial of SNAP Benefits

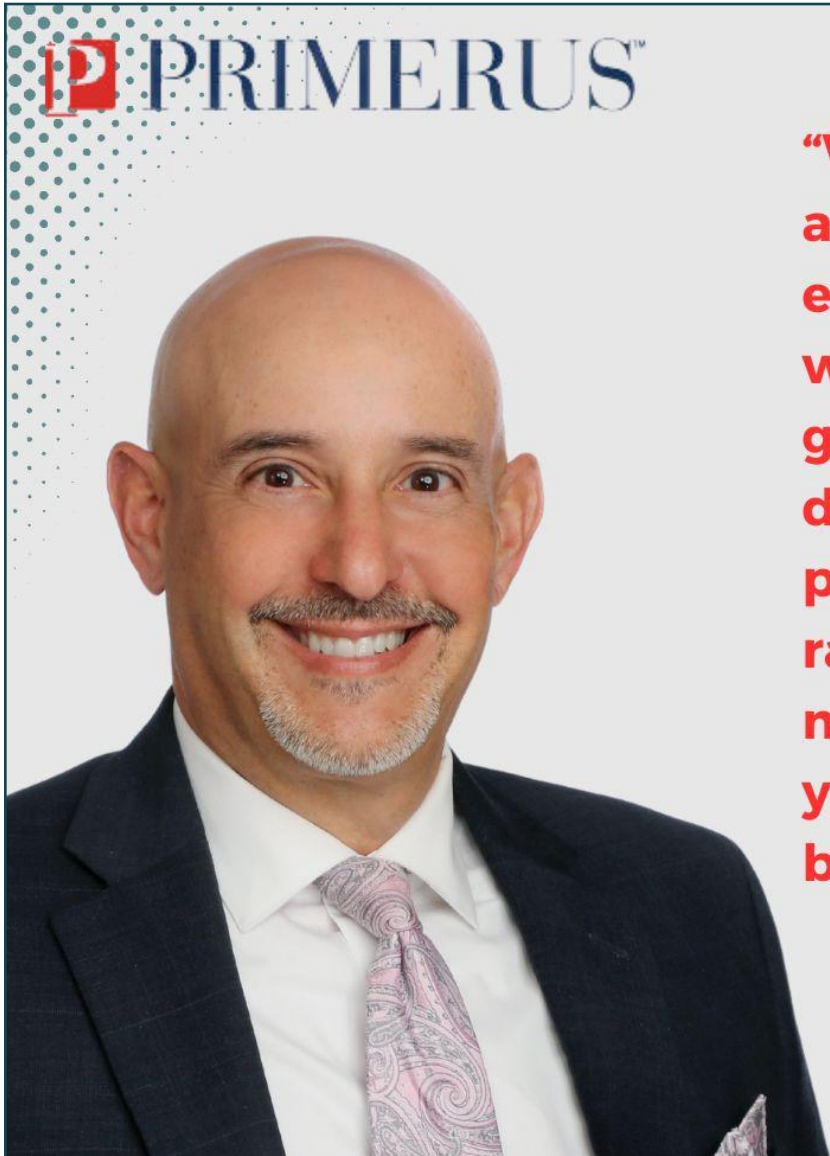
If you believe you have been wrongly denied SNAP, you have the right to request a hearing with an administrative law judge to review the circumstances of your case. However, this request must be made within 90 days of the denial to your **local SNAP office. If you are facing this situation, contact the Special Needs attorneys at Mandelbaum Barrett PC.**

Additional Resources

For more information, check out the following resources:

- SNAP's special rules for seniors and people with disabilities from the **U.S. Department of Agriculture**
- Report from the **Center for Budget and Policy Priorities** about the numerous benefits of the SNAP program for people with disabilities





PRIMERUS™

“When you’re talking about wills and estates and people who are sick and need guardians or are disabled, you’re seeing people at their most raw, who need the most help. Sometimes you see the good, the bad, and the ugly.”

- Richard Miller, Esq.

An exclusive Primerus Interview with Mandelbaum Barrett PC Elder Law Chair, Richard Miller, Esq.

Richard Miller, Esq. spotlighted in Primerus Weekly

“When you’re talking about wills and estates and people who are sick and need guardians or are disabled, you’re seeing people at their most raw, who need the most help,” says Richard Miller, Esq. who heads up the Elder Law Department at Mandelbaum Barrett PC.

“Sometimes you see the good, the bad, and the ugly.”

Certified Elder Law Attorney Richard Miller says some of his cases occasionally resemble something out of reality television. In his current feature in Primerus Weekly, Richard talks about his early life leading up to the present including a makeover appearance in 2003 on the reality show “Queer Eye for the Straight Guy.” “Professionally, I was concerned whether people were going to take me seriously after being on the show,” he says. “But it had the opposite effect. It actually had a very positive professional impact.”

[Read the full interview here.](#)



Donald Dennison, Esq. Will a trust protect assets from a nursing home?

Donald Dennison, Esq. Discusses Asset Protection from Nursing Home Costs in **NJMoneyHelp.com** Interview

“Transfers of assets into trust are typically considered gifts, therefore, this type of planning is usually done well in advance of someone needing Medicaid services.”

Elder Law attorney Donald A. Dennison, Esq. from Mandelbaum Barrett PC shared insights in a recent interview with NJMoneyHelp.com. Delving into the question of whether a trust safeguards assets from nursing home expenses, the article explores topics such as Medicaid planning and the crucial distinctions between revocable trusts and irrevocable asset protection trusts.

[Read the full article here.](#)





NJICLE

NY vs NJ Estate Planning and Administration

A concise guide to estate planning in NY and NJ, offering strategies for minimizing tax consequences, navigating fiduciary litigation, and handling common trust and estate disputes.

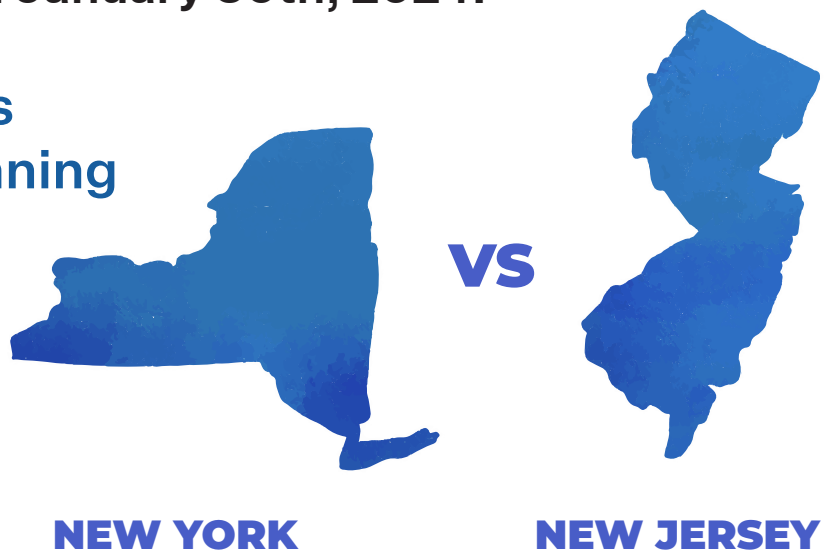
Tues., Jan. 30
9 a.m. - 12:35 p.m.
Earn up to 4.0 credits.



Joshua F. Cheslow, Esq.
Shawna Brown, Esq.
Timothy M. Ferges, Esq.
Stacey M. Valentine, Esq.

Shawna Kirchner Brown, Esq., Elder Law Counsel at Mandelbaum Barrett PC, joined Moderator Joshua Cheslow, Esq., along with Speakers Timothy Ferges, Esq., and Stacey Valentine, Esq., for an online program hosted by the **New Jersey State Bar Association's NJICLE** on January 30th, 2024.

The topic covered was “NY vs NJ Estate Planning and Administration”.



JOIN US FOR AN EMPOWERING AND EDUCATIONAL EVENT FOR ANYONE WHO WORKS WITH OR CARES FOR THE ELDERLY AND DISABLED.

1st Annual Elder Law Day

Friday, March 22, 2024

8:30 AM - 12:00 PM

Park Avenue Club, Florham Park, NJ

Breakfast will be served

Elder Law Day aims to empower individuals involved in caring for and assisting the elderly and disabled. Through informative sessions, attendees will gain the knowledge and tools to effectively navigate the intricacies of elder law to ensure our aging population receives the highest care possible. Sessions include:

“Help! – How Do I Care for My Aging Parents?: Navigating the Maze of Long Term Care for the Elderly and Disabled”

“Everything You Wanted to Know About Medicaid But Were Afraid to Ask ”

“Estate and Probate Litigation – A Pop Culture Revolution ”

Meet Our Speakers:



Hon. Garry S. Rothsadt, Ret.
Cole Schotz, P.C.



Trish Barbosa, RN-BC, CCM
Peace Aging Care Experts LLC



Hon. Randal C. Chiocca, Ret.
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Thank you for placing your trust in our team!

Team Mandelbaum



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