

Starting Soon...

Medicaid Monday: Year in Review Success Stories

December 11, 2023

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Welcome

- ▶ **Your Lines Are Muted**
- ▶ **Type Questions in the Q&A Section at the Bottom of Your Screen**
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Pierrolaw.com/Resources Under
Medicaid Planning**
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WATCH ALL 11 MEDICAID MONDAY VIDEOS

January	2023 Update and the Surprising New Numbers
February	Qualifying and Why It's Become Harder
March	Medicaid Asset Protection Trusts
April	Using a Pooled Trust to Qualify for Medicaid Home Care
May	Nursing Home Medicaid
June	What Happens If You're Denied?
July	Recertification and Post-COVID Protocols
August	Planning for Individuals With a Disability
September	Immediate Needs
October	Consumer Directed Personal Assistance Program (CDPAP)
November	Creative Planning for LTC

<https://www.pierrolaw.com/videos/>

Agenda

- 2023 Medicaid Numbers: One Last Time!
- Top Takeaways: 3 Case Studies
- Looking Ahead: What's In Store for New York Medicaid?



MEDICAID INCOME & ASSET LIMITS 2023

Landmark Medicaid Increases Passed in NYS Budget:
Same income limit will be used for younger people under
Affordable Care Act and for Age 65+, blind & disabled

YEAR	INCOME / MTH		ASSET LIMIT	
	SINGLES	COUPLES	SINGLES	COUPLES
2023	\$1,677 + \$20	\$2,268 + \$20	\$30,182	\$40,821
Difference over 2022	+\$743	+\$901	+\$13,382	+\$16,221

Institutionalized Individual Income Allowance remains the same: \$50

CASE ONE

Medicaid Home Care Using a Medicaid Asset Protection Trust and Pooled Income Trust

Meet Rachel

Rachel Brooks | Age 84 | Widow

Last Week:
Hospitalized After a Fall

This Week:
Rehab ... **Future Unknown**



Background

- Mild memory loss
- Disorientation
- Possible mini strokes
- Still verbal
- Her daughter lives near by and helps when she can



Rachel is a good candidate for Medicaid Home Care (~10 hours a day of personal care)

Rachel's Balance Sheet

Income

Social Security: \$1,345
Pension: \$1,000
TOTAL: \$2,345/month

Assets

Home: \$150,000
IRA: \$75,000
Savings/Checking: \$25,000
Brokerage: \$250,000

EXEMPT ASSETS

Some assets that are exempt:

- \$30,182
- **Home**, if you, spouse, minor or disabled child lives there
- Pre-paid **burial**
- Income producing **business** assets
- **Life insurance** – face value less than \$1,500!
- **IRA** in “Periodic Payment Status”- *major exception, include Roth IRA’s*
- One **Car**

**Non-Exempt Assets= EVERYTHING ELSE
Including Rachel’s IRA!**

Transfer of Assets

- Lookback Period
 - Nursing Home, 5 yrs.
 - Home Care,
 - 2 ½ yrs. lookback expected 2025
- Penalties for Transfers
 - Penalty = number of months before Medicaid will pay for care



Step 1: Rachel Creates a Pooled Trust

With monthly income of \$2,345, Rachel receives \$648 **over** the monthly income allowance of \$1,697

Solution: she establishes a Pooled Trust:

- The pooled trust is a Supplemental Needs Trust administered by a charity
- The non-profit manages funds for the trust beneficiary and pays expenses on their behalf

Rachel transfers \$648/mo. to her pooled trust account and thus is Medicaid eligible.

NOTE: if funds aren't used for her benefit upon death, charity receives the balance.

NOTE: learn more about Pooled Trusts in Medicaid Monday video - April

Medicaid Asset Protection Trust



Step 2: Rachel creates and funds a Medicaid Asset Protection Trust with her home and brokerage account

-This type of trust holds assets like: house, stock, life insurance with cash value in excess of Medicaid allowance

- See Medicaid Monday March 2023 video

MAPT Advantages

- › **Probate avoidance**
- › **Ability to distribute assets** outright or in further trust upon death of Grantor
- › **Ability to hire and fire** trustees at any time
- › **Access to income and assets** within the trust, if done properly
- › **Ability to revoke** an irrevocable trust with consent of beneficiaries

Medicaid Home Care Qualified

Rachel's planning can now apply for Medicaid:

- ▶ Assets: \$25,000
- ▶ Income: \$1,697

Eligible by January 1



CASE TWO

Medicaid Eligibility for Skilled Nursing Care Using the Rule of Halves Technique

BOB REQUIRES SKILLED NURSING CARE

PROBLEM:

\$3,550/month of income

\$361,254 of non-exempt assets

He has gifted \$152,928 over the past 5 years

Bob has nursing home costs of \$16,000/month

He has not done estate planning!

How can legal planning avoid a spend-down and qualify Bob for Medicaid benefits?



Understanding the Medicaid Penalty

Because of the 5-year lookback period, if Bob transfers assets, the transfer will result in a period of ineligibility (a penalty period).



- ▶ Here, Bob would be ineligible for Medicaid for 12 months because of his previous transfers:
 $\$152,928 / \$12,744 = 12$ months w/o Medicaid
- ▶ Penalty period begins when person is:
 1. Receiving Care in a Nursing Home
 2. Is otherwise eligible - \$30,182 or less of countable assets
 3. Has submitted a Medicaid application

Solution: Rule of Halves

- Gift and loan are made of approximately 50% of countable assets.
- The promissory note has been ruled by the Courts to be a **non-countable asset**, just income (used to pay the nursing home)
- The loan payments are calculated to private pay the nursing home while the penalty period runs- a **complex calculation**



Bob's Example (cont.)

- His family pre-pays his funeral (could pay for others), buys him a television, clothes, furniture and pays legal fees- **a total spend down of \$34,000**
- Bob and his family also create a Medicaid Asset Protection Trust to hold the funds that will be saved by completing the rule of halves planning.

Bob's Calculation

Bob's Income: \$3,550 - \$50 allowance = \$3,500 net

Nursing Home Cost	\$16,000
-Income	- \$3,500
Needed from Assets/ Month	\$12,500/mo.
Non-Exempt Assets When Planning Begins:	\$361,254
-Spend-Down	- \$34,000
-Resource Allowance	- \$30,182
At Risk Capital	\$297,072
Past Gifts	\$152,928
TOTAL ASSETS	\$450,000

Bob's Example (cont.)

- Bob gifts \$72,072 to a Medicaid Asset Protection Trust, and loans \$225,000 to Robert Jr., all on December 28, 2023
- Total gifts of \$225,000 (\$72,072 gifted to trust plus prior gifts of \$152,928) are counted as a transfer and result in a penalty of 17.66 months.
 - $\$225,000 / \$12,744 = 17.66$ month penalty
- Loan of \$225,000 (1/2)= Note payments of \$12,500/month for 18 months
- Apply for Medicaid January 1, 2024
 - Penalty runs 1/1/24 - 6/30/25
 - Note pays 1/1/24 - 6/30/25
- **Medicaid Eligible July 1, 2025**

What Has Bob Saved?

Bob's Remaining Assets



Trust	\$72,072
Allowance	\$30,182
Pre-Paid Contract	\$12,000
Personal Property	\$10,000
Prior Gift	\$152,928

- 7/1/25 forward- Medicaid Pays
- Bob's Trust- Protected from Medicaid, but his children can access it and use the money to supplement his care, upon death they inherit.
- (See March 2023's Medicaid Monday for more on Irrevocable Trusts)

\$277,182 saved!

CASE THREE

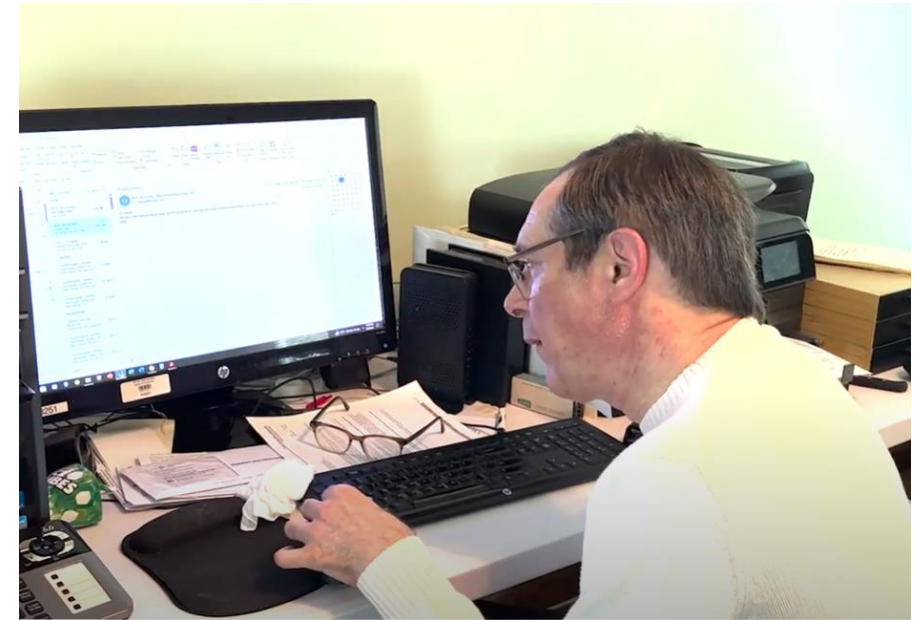
WHAT IF YOU'RE DENIED?

FAIR HEARINGS AND APPEALS:
STANLEY'S VICTORY!



STANLEY PLANNED AHEAD FOR MEDICAID

- Stanley, 66, retired from NYS with goal to age in his own home
- Hired legal team to create estate plan with a “MAPT” and Pooled Trust
- Trusts allowed him to qualify for Medicaid Home Care



DENIAL

16 HOURS/DAY OF HOME CARE
REQUIRED PER HIS DOCTORS
BUT GRANTED ONLY **FIVE**
HOURS INITIALLY BY HIS
MANAGED LONG TERM CARE
PLAN

WHY?



STANLEY APPEALED MLTC DECISION

- **BUT! Granted only 1 additional hour** after MLTC reconsidered Stanley's case. Thus:
 - **Only 6 hours** were being covered by Medicaid
 - **Stanley was privately paying for the balance of 10 hours/day** for months
- **PERSISTENCE: STANLEY GOES TO FAIR HEARING**

FAIR HEARING

Legal proceeding that occurs before an Administrative Law Judge (ALJ).

A fair hearing can only be requested in certain circumstances

See June 2023's Medicaid Monday for more information



ULTIMATE VICTORY!

- Prevailed in his legal appeal following a fair hearing
- Administrative law judge agreed that a Managed Long Term Care Plan was “not correct” in denying him the home care
- Overtured the Plan’s award of only 6 hours of paid home care
- Decision upheld Stan’s doctor’s recommendation for 16 hours of home care assistance each day



WHAT'S NEXT FOR NYS MEDICAID?

- Will the State continue to increase asset and income eligibility limits?
- How will Governor Hochul's Master Plan for Aging affect Medicaid availability?
- Stay tuned for changes in 2024!



MEDICAID MONDAY WEBINARS WILL BE BACK IN 2024!

**12-12:30pm
January 8
2024 Update and the
New Numbers**

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