

Asset Protection and Medicaid Law Newsletter



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ELDER LAW: THE TIME IS NOW!!!

Clients often ask me to explain how “Elder Law” differs from traditional Estate Planning. Whereas the estate planner is concerned with the client’s assets, the Elder Law practitioner counsels the client on how to live his remaining years in dignity.

Thus, Elder Law concentrates primarily on the elder, and the type of life he desires, and only secondarily on his estate. After the Elder Law attorney and client complete their interview, legal documents are drafted, tax considerations are analyzed, and a plan to protect the elder’s estate is implemented.

To protect oneself and one’s family in the event of death, disease or disaster, every senior citizen should have each of the following documents: Last Will & Testament, Power of Attorney, Health Care Surrogate Designation Form, and Living Will.

A Last Will & Testament is a legal document that takes effect upon the death of the will maker. If properly drafted and executed, the will is probated and the decedent’s assets distributed according to his wishes. It is strongly recommended that you periodically update your will.

A Power of Attorney allows a principal to grant authority to his agent to manage the financial and personal affairs of the principal in the event the principal becomes incapacitated. A “durable” power of attorney takes effect immediately.

The Power of Attorney ends at the death of the principal. Spending a few moments now while competent can save thousands of dollars in court costs later when an action for guardianship is brought.

A Health Care Surrogate Designation Form authorizes someone to make decisions about your medical care if you yourself are unable to do so. The person you appoint is your “surrogate”. It is usually coupled with a Living Will, which allows you to state your personal wishes about your medical care in the event that you have a terminal condition.

If properly drafted, these documents can minimize family squabbles and will largely reduce the amount of controversy surrounding your medical treatment.

Elder Law attorneys are also called upon to protect lifelong savings from rising nursing home costs. On average, nursing home expenses exceed \$90,000 a year. The primary resources available to help pay for these skyrocketing costs include: long term care insurance, private pay, Medicare, and Medicaid.

Social Security Disability Status: How to Keep Your Disability Status After Nine Month Trial Work Period Has Ended

Extended Period of Eligibility (EPE)

After your 9-month Trial Work Period, you may still continue to work and keep your Disability Status, but NOT your ongoing disability payments.

You will have an extended period of 36 months during which you can work and still receive benefits for any month in which your earnings are not “substantial”.

Right now, earnings over \$1,000.00 per month are considered “substantial”. So if you earn \$950.00 in April and \$1,200.00 in June, then you would be able to receive benefits in April but NOT in June. You will NOT need to file a new application during this 36-month period.

What is the EPE?

The EPE begins the month after the Trial Work Period (TWP) ends, even if you are not working that month. The first 36 months of the EPE is the re-entitlement period.

How does the EPE help you?

During the 36-month re-entitlement period, you get benefits for all months your earnings or work activities are below the substantial gainful activity (SGA) level as long as you continue to have a disabling impairment.

Social Security suspends benefits for months your earnings are over the SGA level. If your earnings fall below the SGA level in the re-entitlement period, Social Security can start your benefits again.

What happens the first time you work above SGA?

The first time that you work above SGA in the EPE, Social Security will decide that you no longer meet the requirements for disability due to work, and Social Security say that your disability “ceased”. Social Security will pay benefits for the month your disability ceased and the following 2 months.

What happens if you work after the re-entitlement period ends?

Your benefits will end if you work above SGA after the 36-month re-entitlement period.

However you may be able to start your benefits again if you stop work within the next 5 years.

Do you get an EPE under Supplemental Security Income?

No. The EPE applies only to persons who receive Social Security Disability Insurance cash benefits.

Expedited Reinstatement (EXR)

If your benefits stop because your earnings are “substantial”, you have 5 years during which you may ask Social security to resume paying benefits immediately, if you find that your condition is preventing you from continuing work.

This is considered Expedited Reinstatement. Social Security should immediately reinstate your monthly disability benefits. You should NOT have to file a new application and should NOT have to wait for a review of your medical condition by Social Security.

What is EXR?

EXR is a safety net for people who successfully return to work and lose their entitlement to Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) benefits and payments.

If your cash payments ended because of your work and earnings, and you stop work within 5 years of when your benefits ended, you may be able to have your benefits started again right away through a request for EXR.

How does EXR help you?

If you have stopped receiving benefits due to your work, Social Security may be able to restart them again.

The EXR provision allows you to receive up to 6 months of temporary cash benefits while Social Security conducts a medical review to decide if it can reinstate your benefits. You may also be eligible for Medicare and/or Medicaid during this provisional benefit period.

News You Can Use

2017 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	\$2,205.00
Personal Needs Allowance:	\$105.00
Asset Limit (Individual):	\$2,000.00
Asset Limit (Couple):	\$3,000.00
Community Spouse Resource Allowance:	\$120,900.00
Minimum Monthly Maintenance Income Allowance:	\$2,002.50
Maximum Monthly Maintenance Income Allowance:	\$3,022.50