

The Elder Law Update: Can I Get Paid to Take Care of Mom?

By Remo A. Hammid, Esq.

Question: My mother's health has been declining for the past three years and she is unable to take care of all of her affairs by herself. Last year my father died and she now relies on me to help her pay her bills, take her to doctor's appointments, the supermarket, pharmacy and arrange for her general care. Although she has a health care aide, I still spend a lot of my time caring for her. I have two brothers and two sisters, all of whom live out of state. Since I live closest she made me her power of attorney. While I don't mind helping her I have to take time off at least once a week. She wants to pay me to help make up for the time I lose from work. Is she allowed to do this?

Answer: Caretakers are often placed in a difficult position because of the amount of time and effort that they must expend caring for their senior relatives, typically a parent. Among the issues are stress, time pressures and often financial costs. The financial costs can be quite significant when lost wages and transportation costs are taken into account.

The cost is not always

obvious as we often are providing these services to our parents with a charitable intent. However, if we were to consider how much these services would cost if a senior could not rely on a child, but instead needed to hire a third party to perform these services it would be apparent that the cost is significant. The cost of gas alone can be several hundred dollars per year as a caretaker child chauffeurs a parent to three or four doctors a month, travels to pharmacies, grocery stores, or to rehabilitation centers.

Parents, as is in this case, may want to help alleviate the financial burden of being a caretaker. The problem, however, is that any transfer of assets (i.e., money) from the parent to the child will be deemed a gift and ultimately penalized if the parent ever applied for Medicaid. The law presumes that all transfers to a relative are due to "love and affection." To rebut this presumption elder law attorneys have started to advise their clients to enter into "personal services contracts."

A well drafted and executed personal services contract will allow a parent to compensate a child for serv-

ices that the parent would normally have had to pay for. The rate of compensation would be the fair market value for similar services from a third party. In the case of geriatric care managers, it can range from \$15 to \$30 per hour. These contracts are subject to close scrutiny by Medicaid and other government entities and must therefore be drawn with the utmost care.

The result however can be that a caretaker is compensated for their time and expenses. An added benefit is that the parent is able to transfer, over time, potentially significant amounts of assets without a Medicaid penalty and without probate.

Caretakers and seniors interested in these types of agreements are advised to consult with qualified elder law attorneys to review the Medicaid and tax issues involved.

Remo A. Hammid is a local attorney who practices in the areas of Elder Law, Medicaid, Wills, Trusts and Estates. He is an Adjunct Professor at Queens College and Nassau Community College. To schedule an appointment with Mr. Hammid, please call (516) 355-0400.

If you would like to see a particular issue discussed, please write to to: rhammid@hammidlaw.com or 99 Tulip Ave, Suite 306, Floral Park, NY 11001.

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1 PM at the
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in conjunction with

**Jane Greene, RN, LMT
of The Wellness Center**

("Providing for the Caretakers")

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December 4, 2008

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