

Miller Trust: Are you trapped in the Gap?

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Paying for nursing home care is difficult for many Arkansans. Many are forced to seek Medicaid eligibility. There are several requirements to qualify for long-term care Medicaid. The major Medicaid eligibility requirements are that the individual:

- requires nursing home level of care;
- has resources that total no more than \$2000, with some being excluded; and
- has income less than the income cap.

This article addresses one of the major problems of *having too much income to qualify yet too little to pay for nursing home care*. Individuals in this situation are “trapped in the gap.”

Arkansas is one of a dozen or so states that have a strict income limit on Medicaid eligibility for long-term care services. These services are not part of the medically needy program, so, no spend-down of income is allowed. States like Arkansas have various names like “income cap” states or my favorite, “Utah Gap” states. Utah, by the way, is not an income cap state. My friend, Virginia Fraiser the former Colorado State Ombudsman, is credited with the term. She described the difference between the income cap and the ability to pay for nursing home care as being as wide as a gap in the Utah canyons. The term stuck.

The present income cap in Arkansas is \$1,911.00 a month. The average monthly cost for nursing home care is somewhere between \$4,500 and \$5,000 a month. Obtaining nursing home care, if your income falls between “the gap”, is difficult if not impossible. Your spouse, should you have one, can suffer. They can be left with a choice of taking care of you or having no money to live on. Nursing home care is no option at all in some cases.

John and Mary Smith provide an example. They are retired and have a modest income. John receives \$2700 a month from Social Security and a pension. Mary receives \$660 a month in Social Security. Their combined total income is \$3360 a month. John recently suffered a stroke and is presently hospitalized. Complications require him to need skilled nursing home care once he leaves the hospital. The cost of nursing home care will be at least \$4,500 a month. John’s income is too high to qualify for Medicaid and their combined income will not pay for John’s care. John cannot afford to go into a nursing home and Mary is unable to care for him at home. John and Mary are “trapped in the gap.”

The Smiths are caught in a situation that is all too common. *They are neither wealthy enough to pay for care nor poor enough to qualify for Medicaid.* There is, however, a way for John to become income eligible. This

can be accomplished by using an income only trust also called a *Miller Trust*. It does not require any advanced planning and is typically used in a crisis situation like the Smiths. Once he is eligible for Medicaid, the cost of John's nursing home care would be covered. It would also allow Mary to benefit from the Medicaid spousal impoverishment provisions.

A Miller Trust is an irrevocable trust that permits the individual to become income eligible under Medicaid. All of the John's income would go into the trust. Funds from the Miller Trust would pay the nursing home. Medicaid, if John is eligible in all other respects, would pay what the trust did not cover.

The spousal impoverishment provisions could be used to help Mary. Should they apply, Mary would not be required to contribute any of her own income to John's care. Some of John's income could be contributed to Mary. This is called the Community Spouse Monthly Maintenance Needs Allowance. This is a combination of a basic income allowance and a shelter allowance. The basic income allowance equals a percentage of the poverty level. The excess shelter allowance equals the amount of shelter costs (rent, mortgage, taxes, insurance, and utilities) which exceeds 30% of the basic income allowance. The total needs allowance is set to a specific amount which is linked to the consumer price index.

Then Mary can receive a contribution from John to bring her income up to the amount of the needs allowance (\$1,750.00 as of July 1, 2008). If

Mary's income was greater than the needs allowance, she would get no contribution. This contribution is referred to as the Community Spouse Monthly Income Allowance. In the example, Mary's income is so low that she would be able to receive part of John's income. This is the kind of positive outcome the spousal impoverishment provisions were meant to produce.

A Miller Trust will not help everyone in this situation. The individual can still have too much income for the trust to work. The Trust is also considered a last resort with no other options available. An elder law attorney or an attorney experienced in Medicaid can answer any questions you have and determine if this type of trust is an option.

This article is for informational purposes only. Nothing contained therein is intended to be, nor should be, taken for legal advice.

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