

# Planning for your Future

A NEWSLETTER ABOUT IMPORTANT ESTATE PLANNING AND ELDER LAW ISSUES

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## Firm News

The firm would like to welcome the following new employees to the White Plains office: *Elizabeth Valentin, Esq.* as an Elder Law and Trusts & Estates attorney and *Paul Mallia* as a Guardianship, Real Estate, and Litigation paralegal.

*Bernard A. Krooks* started his term as President of the National Academy of Elder Law Attorneys (NAELA) on June 1, 2002. He also continues to lecture on Medicaid and elder law planning locally and nationally to numerous professional and community organizations. He lectured for the New York State Bar Association in New York City and at Millennium Financial in Rye Brook, NY. Mr. Krooks spoke at a seminar sponsored by our office for CPAs. He served as Chair of an elder law New York University CLE seminar held in New York City. Mr. Krooks addressed to the Washington Chapter of NAELA about Medicaid and Estate Planning. In addition, he spoke at The Financial Planning Success Forum and at the Suffolk Academy of Law. Mr. Krooks also recently spoke at a Medicaid and Elder Law Planning seminar sponsored by the Professional Education System, Inc. In addition, he also lectured at the National Aging and Law Conference and the National Academy of Elder Law Attorneys Institute.

*Howard S. Krooks* has also lectured at various seminars and conferences this past year. He spoke at the 12th Annual UJA Federation in White Plains, NY. He lectured for the Ceridan Performance Partners at a seminar held in New York City. Mr. Krooks also spoke at the Senior Advisor Institute in Elmsford, NY. He lectured for the New York State Bar Association, a seminar held in White Plains, NY, at their annual meeting in Toronto, Canada and at their Fall Program. Mr. Krooks also lectured at the Society for Senior Advisors in Plainview, NY on various elder law issues. He lectured at a New York University CLE Seminar. He recently served as a lecturer at a seminar sponsored by the Mid-Hudson Chapter for CPAs.

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## The Medicaid Application Process — What To Expect

BY VINCENT P. MANCINO, ESQ.

The Medicaid application process can often be confusing and quite onerous, even for the most sophisticated of individuals. Recently, a woman came to our office in order to discuss some trouble that she'd been having with her father's Medicaid application. Her father had been admitted to a nursing home several months ago and she had gone to the local department of social services ("DSS") in order to apply for Medicaid nursing home (i.e., institutional) benefits on his behalf. Unfortunately, she was quite surprised to learn that a) it was too late to secure her father's Medicaid eligibility as of the date needed (i.e., nobody told her that there were timing issues involved in the Medicaid application process), and b) she would have to provide DSS with a great deal of financial and other information/documentation, most of which she had no idea how to secure (e.g., explanations of transactions that occurred years ago). This is a story which we hear all too often. Not only are there a variety of different procedures and requirements which vary from county to county, but the process can be significantly different depending on the type of Medicaid benefits for which an individual is applying (e.g., institutional, home care, community, etc.). This article focuses particularly on the process of applying for Medicaid institutional benefits, which can be divided into five (5) steps: 1) Preparation; 2) Submission; 3) Processing; 4) Approval; and 5) Continuing Eligibility.

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For more information about elder law and estate planning

## What Social Security Can Mean to You and Your Family

By ELIZABETH VALENTIN, ESQ.

### ELDER CARE



When people hear about Social Security, they often think "retirement benefits." However, Social Security is more than a retirement program. It can provide you and your family with disability, retirement and survivor's protection. For example, if you die, your spouse and dependent children may be eligible for Social Security survivor benefits. In addition, Social Security can provide financial help to you and your family if you become disabled.

The amount of your Social Security benefits depends on how much in total wages you have earned. You receive earnings credits based upon those wages. These credits are used to determine your eligibility for retirement, disability or survivors benefits. The amount of total wages required to earn a credit changes each year. You can earn up to a maximum of four credits per year by working in employment covered by Social Security. In 2002, you must earn \$870 in covered earnings in order to accrue one Social Security credit. The number of credits you need to be eligible for benefits depends on your age and the type of benefit being sought. Anyone born in 1929 or later needs forty credits to become eligible for retirement benefits. During your lifetime, you will probably earn more credits than the minimum number you need to be eligible for benefits. However, these extra credits will not increase your benefit amount. It is your average earnings over the years you have worked that determines how much your monthly payment will be.

Mrs. Smith has worked for a high school in White Plains for most of her career. She has accumulated 25 credits towards her Social Security benefits. She contacted LKR inquiring whether at full retirement age she would be entitled to Social Security benefits separate and apart from her husband who has currently accumulated 23 credits.

*If a husband and wife retire at full retirement age, does each receive his/her full benefit*

*amount?* When each member of a married couple works in employment covered under Social Security and they both meet all of the eligibility requirements to receive Social Security benefits, his/her lifetime earnings are calculated independently to determine their respective Social Security benefit amounts. Each spouse receives a monthly benefit amount based upon his/her own earnings; neither spouse is penalized for being married. However, if one spouse earned low wages or did not earn enough Social Security credits to be insured for benefits, s/he may be eligible to receive benefits as a spouse.

The following are some other frequently asked questions our clients inquire about regarding Social Security.

**Who is eligible to receive survivor benefits?**  
The family of a deceased worker may be able to receive survivor benefits. If the decedent worked, paid Social Security taxes and earned sufficient credits, a widow(er) age 65 or older can receive full Social Security benefits or reduced benefits paid as early as age 60. The amount s/he will receive is a percentage of the deceased's basic Social Security benefit.

There is a special rule for the deceased worker's spouse who cares for the decedent's children. In this case, the spouse and children may receive benefits even if the decedent had fewer credits than are needed for retirement benefits. If the decedent had credits for one-and-a-half years of work within the three years before his/her death, the spouse and children may receive benefits. A widow(er) may receive benefits at any age if s/he cares for the deceased's child who is under age 16 or is disabled. Unmarried children of the deceased spouse under age 18 (or up to age 19 if they are attending elementary or secondary school full time) may also receive benefits. Any of the deceased spouse's children who were disabled before age 22 and remain disabled are enti-

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## The Medicaid Application Process *continued from page one*

1. **Preparation:** In most cases, an applicant (and his/her spouse, if applicable) will be required to provide DSS with a complete financial history, including account statements and an explanation of all transactions over \$1,000 (\$750 in some counties), occurring within the thirty-six (36) months or sixty (60) months in the case of certain trusts, immediately preceding the requested eligibility date (known as the "Medicaid pick-up date"). This thirty-six (36) month period is known as the "look back period." In explaining transactions over \$1,000 (or \$750), the applicant must provide the local DSS with verification of the source of any deposits and the whereabouts of any withdrawals over \$1,000. This verification may require the applicant to provide DSS with copies of deposit slips and/or canceled checks. In addition to providing DSS with a complete financial history covering the look back period, an applicant must provide DSS with a myriad of other documents, including, among others, verification of income, residency, citizenship (or qualified alien status), marital status and other health insurance.
2. **Submission:** An application may be submitted to the local DSS even after the requested Medicaid pick-up date. In fact, DSS can approve an application retroactive up to three (3) months prior to the month of application. Thus, for example, if an application is submitted to DSS during the month of July, 2002, DSS would be in a position to authorize the applicant's eligibility effective April 1, 2002, provided that the applicant is otherwise eligible as of that date. However, since it may take several weeks for an applicant to secure the requisite documentation, we recommend that the applicant begin gathering such documentation well in advance of applying for Medicaid benefits.
3. **Processing:** Once the application is received by DSS, a caseworker (sometimes called an "Eligibility Examiner") will be assigned to review the application in order to determine whether the applicant meets the eligibility requirements. If additional documentation is required, the caseworker will likely issue a formal Request for Information (sometimes called a "Pend Letter" or "Eligibility Follow-Up Notice") which should include a detailed list of the additional documentation that must be provided to DSS, as well as a due date by which the requested documentation must be received by DSS. By law, the minimum amount of time that the caseworker must give the applicant to provide the requested documentation is ten (10) days. If the requested documentation is not received by the due date, the caseworker may deny the application.
4. **Approval:** By law, DSS is required to issue a determination of eligibility within forty-five (45) days of the agency's receipt of the application. However, in practice, it usually takes several months in order for DSS to issue its determination. Once the application is approved, DSS will issue a Notice of Acceptance (sometimes called a "Notice of Intent to Establish a Liability Toward Chronic Care"), which should include (among other things) the Medicaid pick-up date, as well as a Budget Explanation establishing the amount of the applicant's Net Available Monthly Income (known as "NAMI"), if any, that must be contributed towards the cost of the applicant's nursing home care.
5. **Continuing Eligibility:** After the approval of the Medicaid application, there are two (2) types of inquiries that DSS may make in the future in order to authorize an individual's continuing Medicaid eligibility. The first type of inquiry is a recertification. Every Medicaid recipient must recertify annually to DSS that s/he continues to qualify for Medicaid nursing home benefits. In that regard, the applicant may be contacted by DSS regarding the preparation and submission of a Recertification Statement. This inquiry must be responded to in a timely fashion in order to prevent the Medicaid recipient from falling off the Medicaid roster.

If the Medicaid application is denied for any reason, an applicant may request a fair hearing to challenge such denial. The Notice of Denial should include specific instructions for requesting a fair hearing. The fair hearing request must be made within sixty (60) days of the Notice of Denial. In addition to requesting a fair hearing to challenge a denial, many counties will reconsider the application if a request for reconsideration (including any missing documentation) is received within thirty (30) days of the denial. For New York City applications, the New York City Human Resources Administration typically allows the applicant up to ninety (90) days to request a reconsideration.

The second type of inquiry is a Tape Match Request. From time to time, DSS may inquire about the nature of certain income reported on the Medicaid recipient's income tax return or from some other source which indicates that income was generated in the Medicaid recipient's name for a particular year. In such cases, the Medicaid recipient may receive an inquiry into the nature and extent of such income and/or resources. This inquiry must be responded to in a timely fashion in order to prevent the Medicaid recipient from falling off the Medicaid roster.

If you would like more information about Estate Planning, Probate or Elder Law, please call either our New York office at 212-490-2020 or our White Plains office at 914-684-2100. We will be happy to send you free information regarding services we can provide you.

If you have any questions regarding the Medicaid process, or regarding the eligibility requirements related to any particular type of Medicaid benefits, please contact our office or visit our website [www.elderlawnewyork.com](http://www.elderlawnewyork.com).

### What Social Security Can Mean to You and Your Family *continued from page three*

bled to receive benefits. In addition, dependent parents age 62 or older may also receive benefits.

**What is the Lump Sum Death Payment and who can receive the Lump Sum Death Payment?** A lump-sum death benefit of \$255 may be paid upon the death of a person who has accumulated sufficient credits to be insured under the Social Security program. The lump-sum death benefit can be paid upon the death of the insured person even if s/he was not receiving retirement or disability benefits at the time of death. However, this payment will only be made to the spouse who was living with the deceased at the time of death, or, to a spouse of a child who was eligible for a Social Security benefit based upon the deceased's work record, in the month of the deceased's death.

**What kind of disability benefits does Social Security pay?** Both the Social Security Disability Insurance (SSDI) and the Supplemental Security Income (SSI) programs provide a monthly income for people with severe disabilities. SSDI pays

benefits to disabled workers and their families. In order to be eligible, you must have earned a minimum number of credits from work covered under Social Security.

SSI provides monthly income to people who are age 65 or older, or are blind or disabled, and have limited income and financial resources. You may be eligible for SSI even if you have never worked in employment covered under Social Security. SSI benefits are only paid to the person with a disability, not to any family members.

### Firm News *continued from page one*

Congratulations to *Valarie Russo*, a paralegal in our White Plains office who was married on May 31, 2002. Best wishes to the happy couple!

Congratulations to *Kevin Cohen* and his wife, *Shari*, and son, *Justin*, as they welcome a new addition to their family. *Melissa Gabrielle* was born on March 26, 2002.

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