

# Law Office of Eileen R. Fitzgerald

## An Elder Law Newsletter

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### News From Eileen

Thanks for the Christmas cards and the referrals. I appreciate the confidence you have in me when you refer your friends and neighbors. We wish you and your family a happy holiday season and a Happy New Year!

At this time of year, many of us contribute to our favorite charity. We give to those who are less fortunate than we are.

You cannot deduct a cash contribution, regardless of the amount, unless you keep a record of the contribution, such as a canceled check, a bank statement showing the name of the charity, the date and the amount, or a written communication from the charity. The written communication must include the name of the charity, date of the contribution and amount.

The following are not deductible as charitable contributions: money or property given to civic leagues, social and sports clubs, unions and chambers of commerce, political groups or candidates for public office, cost of bingo, lottery or raffle tickets.

### 2008 Public Aid Limits

The new Public Aid spousal asset allowance for 2008 is 104,400.00. This is the amount that can be transferred from the nursing home spouse's assets or from joint tenancy assets to the community spouse's name only. The new Public Aid community spouse income allowance for 2008 is \$2,610.00 per month. The community spouse is the spouse still living at home. The rules for spouses are complicated and anyone doing any planning should speak with an elder law attorney.

The Public Aid recipient in a nursing home is allowed to keep \$2,000.00 in assets, as well as \$30.00 per month from his or her income. The prepaid burial limit has increased to \$5,219.00 for funeral home services for an irrevocable prepaid funeral, and remains at \$1,500.00 for funeral home services for a revocable prepaid funeral. There is no limit on amounts paid for burial merchandise including coffin, plot, vault, marker and grave opening.

Please call for an appointment if you would like to discuss Medicaid planning.

## **Spousal contributions for Public Aid recipients**

An Illinois appeals court ruled that the Medicare Catastrophic Coverage Act of 1988 (MCCA) does not take precedence over a state law that requires community spouses to contribute income in excess of their community spouse income allowance to the support of their spouse in a nursing home. The 2007 income allowance is \$2,541.00 per month. A lawsuit was filed by spouses of nursing home residents, against Illinois. They argued that the State was illegally trying to collect support from them on behalf of their spouse who was in a nursing home. They maintained that the State lacked authority under MCCA to require spousal support if the community spouse's income exceeds the community spouse income allowance. Illinois requires the community spouse to contribute to the nursing home spouse's care if the community spouse's monthly income exceeds \$2,541.00 in 2007. It is not a dollar for dollar contribution. There is a table in the Public Aid Policy Manual which indicates the amount the spouse must contribute, based on the community spouse's total annual income. The trial court agreed with the community spouses. The Appellate Court of Illinois reversed the trial court decision. The court noted that Medicaid is a "payer of last resort" and that the state law supports this aspect of the Medicaid program. Community spouses will continue to contribute income to their nursing home spouse's support, if the community spouse's monthly in-

come exceeds \$2,541.00 in 2007.

## **Tax Information**

Tax returns are due on April 15, 2008. If you pay estimated taxes, the first installment is also due on April 15th. Below are a few tax tidbits to keep in mind while preparing your income tax returns.

(1) If you were the beneficiary of a trust or an estate you should be receiving your Schedule K-1. This document shows the income and deductions that must be included on your Form 1040.

(2) If you sold your home in 2007 and owned the home and lived there for the last 2 out of 5 years the sale does not have to be reported on your income tax return, if your gain does not exceed \$250,000.00 if you are single or \$500,000.00 if you are married filing jointly. Be sure to provide your tax preparer with the closing statements from both transactions (assuming you sold a home and purchased a new one) so the proper amount of real estate taxes can be deducted.

(3) Nursing home expenses are also deductible. IRS Publication 502 indicates that the cost of medical care in a nursing home is deductible. This includes the cost of meals and lodging in the home if the main reason for being there is to get medical care. The cost of meals and lodging is not deductible if the reason for being in the home is personal, although the cost of medical care is deductible.

## Social Security Increases

The nation's roughly 54 million elderly and disabled Social Security recipients will get a 2.3 percent cost of living increase in payments in 2008. This is expected to raise the average monthly payment for the typical beneficiary by \$24. The 2008 increase is down from the 3.3 percent bump recipients received in 2007. Nearly one-third of the nation's retirees depend on Social Security benefits for 90 percent or more of their income.

Starting in January 2008, the average monthly Social Security payment will rise from \$1,055 to \$1,079 a month for individuals and from \$1,722 to \$1,761 for couples. This increase will apply to both elderly and disabled Social Security recipients, and individuals who receive both disability and retirement Social Security will see increases in both types of benefits. The Social Security cost of living adjustment also raises the maximum amount of earnings subject to Social Security taxation to \$102,000.

Benefit-reduction thresholds for those who retire early also will rise. The Normal Retirement Age (NRA) is age 65 and 8 months for those born in 1941 and 65 and 10 months for those born in 1942. Although there is no limit on outside earnings beginning the month an individual attains full retirement, those who choose to begin receiving Social Security

benefits before their NRA may have their benefits reduced, depending on how much other income they earn. Early beneficiaries who will reach their NRA after 2008 may now earn \$13,560 a year before Social Security payments are reduced by \$1 for every \$2 earned above the limit. Those early beneficiaries who will attain their NRA in 2008 will have their benefits reduced \$1 for every \$3 earned if their income exceeds \$36,120 in the months prior to the month they reach their NRA.

## Powers of Attorney

It is important to know how to sign as an agent under a power of attorney. If John Doe is the agent and he is signing for Mary Doe, John signs as follows:

**Mary Doe, by John Doe, Agent**



*Do not regret growing  
older; it is a privilege  
denied to many.*

*Author unknown*

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## 2008 Medicare Premiums

The new Medicare premiums, deductibles and coinsurances have been announced by the Centers for Medicare and Medicaid Services. The standard Medicare Part B premium is increasing by 3.1% to \$96.40 a month, the smallest increase since 2001.

These are the new Medicare figures:

Part B premium: \$96.40 per month (was \$93.50)

Part B deductible: \$135 (was \$131)

Part A deductible: \$1,024 (was \$992)

Co-payment for hospital stays days 61-90: \$256 per day (was \$248)

Co-payment for hospital stay days 91 and beyond: \$512 per day (was \$496)

Skilled nursing facility co-payment, days 21-100: \$128 per day (was \$124)

\$122.20 is the monthly Medicare Part B premium for individuals with annual incomes between \$82,000 and \$102,000 and married couples with annual incomes between \$164,000 and \$204,000. If the income increases from there, so does the premium.

## Joint Tenancy and Public Aid

Public Aid handles joint assets in different ways, depending on the type of asset. For real estate, if the deed shows that there is more than one owner then Public Aid considers the client's legal interest as a proportionate share based on the number of owners. For example: Four owners of jointly held real estate each have a 1/4 interest in the property. Only a 1/4 interest is counted as belonging to the Public Aid applicant. If the property is sold, the Public Aid applicant would receive 1/4 of the net proceeds. If the property has not been in joint tenancy for the look-back period (still 36 months in Illinois) Public Aid may penalize the transfer, depending on when the property was changed to joint tenancy.

For other assets, such as bank accounts, Public Aid considers the joint asset as belonging to the applicant unless it can be proven that the other joint tenant actually contributed to the asset. There are some exceptions, such as a joint income tax refund, which will be considered as own by both joint taxpayers, in equal shares.