

# ELDER LAW TODAY

Adrian & Pankratz, P.A.

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## *Is An IRA Counted By Medicaid?*

**L**ouise Williams has had a rough year. Her Husband, Tom, suffered a stroke in the early fall and since then she has been trying to keep her head above water, care for Tom and put in a full day's work as a registered nurse and run the household. Not surprisingly, she is exhausted.

To make matters worse, she has just learned from the doctor that her husband will need nursing home care.

In talking with some co-workers, Louise was told that her 401(k) plan at work must be spent down before Tom will qualify for Medicaid. She comes to you to find out if this is true. She tells you that they have the following assets:

- |                  |           |
|------------------|-----------|
| 1. The house     | \$100,000 |
| 2. 2005 Buick    | \$9,000   |
| 3. Bank accounts | \$45,000  |
| 4. Savings bonds | \$5,000   |
| 5. 401(k) (hers) | \$125,000 |

Medicaid is very fact-specific. By that we mean that the outcome of any particular case can turn on one or two seemingly minor facts. What's more, the laws differ greatly from state to state in certain respects. This case is an excellent example. Here's why:

Some states will say that their total countable assets include the bank accounts, the savings bonds, and the 401(k) plan. (One car and the house are exempt.)

If we add together the bank accounts, savings bonds and 401(k) plan, their total assets are \$175,000.

With total assets of \$175,000, Mrs. Williams will have to spend down more than \$85,000 before her husband will qualify for Medicaid. That's because some states count the IRAs, pensions, 401(k) plans and other retirement plans of the nursing home spouse and the community spouse when figuring what assets count for Medicaid spend-down purposes. Thus the total spend-down would be more than \$85,000.

If Mr. Williams is a Kansas resident, on the other hand, the only countable assets for Medicaid purposes would be the bank accounts and savings bonds. That's because the IRAs or other retirement plans of the community spouse (i.e. the non-nursing home spouse) are not countable. So the total countable assets in Kansas would only be about \$50,000 and the Medicaid spend-down would be less than \$25,000.

Thus, in this particular case, the spend-down in some states would be more than \$85,000 while in Kansas the spend-down would be less than \$25,000. This is a \$60,000 difference which turns solely on the question of Mr. Williams' state of residence.

The IRAs or other retirement plans of the nursing home spouse are counted for Medicaid purposes. The difference only occurs regarding the retirement plans of the community spouse.

Medicaid rules are very specific. With proper planning and advice, the benefits to the applicant and his or her family can be significant.

### *Services Available*

Adrian & Pankratz, P.A. offers the following Elder Law services:

- |                    |                         |
|--------------------|-------------------------|
| Division of Assets | Long Term Care Planning |
| Guardianship       | Powers of Attorney      |
| Estate Planning    | Wills                   |
| Living Trusts      | Special Needs Trusts    |



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