



## LEVANDOWSKI & DARPINO

An Elder Centered Law Practice  
Helping to Solve the Puzzle of Long-Term Care



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October 2011

### Levandowski & Darpino's Elder Law Advisor

#### CAN MOM PAY HER CAREGIVER CHILD?

Donna pulls into her mother's driveway at 8 a.m., as she has done every day for the last year and a half. Donna grew up in this house. Her mother now lives here alone.

Donna makes sure her mother gets out of bed, gets dressed, and has breakfast. She gives her mother her morning medications. She checks the mail to see if any

bills need to be paid. She tosses out any solicitations. Her mother is generous to charities asking for money. Donna's mother was diagnosed with Alzheimer's two years ago.

Today is Tuesday, so Donna will be back later to take her mother to the doctor. Wednesday is foodshopping. Thursday is housecleaning. She spreads out the chores so that she can work part-time. She has a son in college and her daughter will graduate from high school next year. She used to work full-time until her mother needed help every day.

#### WHAT KINDS OF SERVICES CAN BE COMPENSATED UNDER A PERSONAL CARE AGREEMENT:

- Housekeeping and laundry
- Food shopping, cooking
- Help with taking medications
- Transportation
- Assistance with dressing, bathing and other activities of daily living
- Managing finances and bill paying
- Monitoring and obtaining healthcare
- Anything else that you do.

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## THE TOP TEN WORST HALLOWEEN TREATS

1. Apples (*Halloween is not about eating healthy*)
2. Candy corn (the fruitcake of Halloween)
3. Circus Peanuts (the definition of artificial flavor)
4. Anything homemade (popcorn balls, anyone?)
5. Necco Wafers (fruit-flavored chalk disks)
6. Tootsie Rolls (look like chocolate but not really chocolate)
7. Anything fun-sized (since when is one bite fun?)
8. Candy canes (left over from Christmas)
9. Raisins (see apples)
10. Hard butterscotch candy (doesn't taste like scotch)

After dinner with her husband and daughter, she returns to make sure her mother takes her evening medications and gets to bed without incident. She makes sure the nightlights are working so her mother can navigate to the bathroom during the night.

Then she goes home and worries.

She knows it will not get better. Her mother will need more and more help as time goes on.

Donna came to talk to me about the future. What are her options? Hiring in-home care? Assisted living? A nursing home? How will this care be paid for? Are there any government

programs that can help? Donna has been told that Medicaid would require her mother to spend down her assets to almost nothing.

Then she asks me the question I have heard many times. **"Can I be paid for the care that I give my mother?"** Her mother understands the situation and would prefer to give her money to Donna rather than lose it to Medicaid. Her mother feels guilty because Donna cannot work full-time. Can she compensate her daughter for all that Donna has done and will continue to do for her?

My answer is No and Yes.

Unfortunately, the answer is No as far as the last year and a half are concerned. Fortunately, the answer is Yes as far as the future is concerned. The trick is to put a **personal care agreement** in place.

With a personal care agreement, Donna's mother will be able to pay Donna for all that she does: the personal care, such as the daily visits to make sure her mother eats and takes her medications; the trips to

the doctor and shopping; even the cleaning and the laundry. Virtually everything that Donna does for her mother can be covered by the agreement.

Two things can be accomplished with a personal care agreement. As already mentioned, Donna can be compensated for her time and efforts. But what if Donna says to me, "I don't want to take my mother's money!" I would then explain to Donna that she doesn't have to spend the money. She can hold it for her mother. This strategy will help greatly if Donna's mother needs Medicaid for nursing home care in the future. And with a diagnosis of Alzheimer's, she almost certainly will.

Let me explain.

Medicaid has a five year look-back period. When you apply, Medicaid looks back five years to see if you made any gifts or transferred any money.

If you did, Medicaid will deny benefits. If Donna's mother were to pay Donna for her caregiving, and no personal care agreement were in place, Medicaid would consider any such payments as gifts and deny benefits. Medicaid assumes that Donna was helping her mother out of love and affection, not for compensation. The personal care agreement changes all that. With a personal care agreement, Medicaid cannot consider payments to Donna as gifts because there is a written arrangement. Even if Donna is holding the money for her mother.

Therefore, a personal care agreement can be a golden opportunity to shelter assets from nursing home costs. If you are caring for a family member or loved one, it would pay

to see if a personal care agreement can help in your situation.

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