Planning to Avoid Elder Abuse

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Overview

Many people have had or will have a family member in need of in-home or nursing home care. Medical issues are often frequently associated with advanced age. Those issues can result in at least part-time care or, in some cases, a full-time in-home nursing aide or even institutionalized care.

A significant concern of family members of a loved one requiring some level of nursing care, whether by an in-home aide or in a nursing home, is the potential for abuse, particularly financial abuse, of their family member. What steps can be taken to minimize the potential for elder abuse?

Planning steps to take to avoid elder abuse – it's the topic of today's post.

Tax Court Saga

A unique place to find an example to use for discussing elder abuse is in a U.S. Tax Court opinion. But elder abuse was certainly involved in *Alhadi v. Comr., T.C. Memo. 2016-74.* The case involved Dr. Marsh. He was born into a Montana farm family in 1915. After World War II, he moved to California and practiced optometry. He never married and lived a frugal life in his small second story apartment. He invested his money prudently and grew the sum to over $3 million.

At age 85 Dr. Marsh fell and broke his hip. He rehabilitated, but by the time he reached age 91 he could no longer drive, couldn't prepare his own food and couldn't go to the doctor by himself. He suffered from hearing and vision loss and also had a stroke. He was eventually diagnosed with dementia and cognitive decline. His short-term memory was diminished, and he had trouble recalling details about his personal assets and finances. He also suffered from incontinence, atrial fibrillation, congestive heart failure, hypertension, chronic back pain, and arthritis,

Dr. Marsh eventually outlived his siblings and had no other family members, and at age 91 was hospitalized again for his numerous conditions. His doctor determined that he could not be discharged unless in-home care was arranged for him. A hospital employee, Ms. Alhadi learned that Dr. Marsh wouldn't be discharged without in-home care. Even though the hospital had a policy that employees couldn't solicit work from patients, Ms. Alhadi slipped a note to Dr. Marsh offering her services for in-home care. He accepted her offer and she became his primary caregiver. Dr. Marsh initially paid her by the hour, but then switched payment to a $6,000 per month amount – more than 50 percent above the going rate. He also paid her an additional monthly amount for groceries. Within a few months, she used the money she received from Dr. Marsh to put a down payment on a $1 million home and began to pressure him to help her with the mortgage payments. Over the next few months, Dr. Marsh wrote her checks totaling $400,000. She used the money to pay off her husband's $80,000 interest in their old home and to remodel her new home. Dr. Marsh also bought $7,000 worth of furniture for her, and she paid $8.,000 for a new stone façade, $34,000 for landscaping work at the new home and $73,000 for a new pool complete with a spa and a "therapeutic turtle mosaic."

Ms. Alhadi also convinced Dr. Marsh to pay $25,000 for a cruise. She took him along but left him alone sitting in the sun while she spent time with her own children. Dr. Marsh later couldn't remember paying for the cruise and was surprised when he was shown the check he had written.

Dr. Marsh had a niece that lived in Seattle that would call him each Sunday evening, but within a year of Ms. Alhadi becoming his primary caregiver, she encountered difficulty in reaching him. Ultimately, neither she nor any other relatives could get in touch with Dr. Marsh. Ms. Alhadi, would tell Dr. Marsh that she loved him and suggested that they get married. She would sit in front of him and cry about her financial struggles.

Ms. Alhadi divorced her husband, and in the divorce action didn't disclose any of the money that she was being paid for her in-home care job. She hired a tax preparer to prepare her 2007 return, but again didn't disclose the income from her in-home care work. However, on mortgage applications for her new home, she did disclose the income received from working for Dr. Marsh.

By the end of 2008, Dr. Marsh had written checks to her totaling almost $800,000. She then got Dr. Marsh to write her five more checks worth $100,000 each. Because most of Dr. Marsh's wealth was held in Vanguard Group mutual funds, a Vanguard representative questioned why five checks were written in a short timeframe. On Vanguard's recorded calls with Dr. Marsh, Ms. Alhadi could be heard in the background coaching him. Vanguard suspected fraud, dishonored the checks and suspended his accounts. Vanguard also suspected elder abuse and sent a report to the California Department of Health and Human Services. An investigator checked into the matter and learned about what had been happening. Ms. Alhadi also took Dr. Marsh to an estate attorney to try to have him name her his agent under a power of attorney so that she could get the Vanguard accounts unblocked. She also wanted Dr. Marsh to have a will prepared that named her as the beneficiary.

Finally, the state filed a petition in state court to put Dr. Marsh under a temporary guardianship. The court granted the petition in January of 2009 on two grounds – 1) his assets were at risk; and 2) he wasn't being provided even a bare minimum of care. The court's description of his living conditions in his apartment were truly disgusting. The next month, Dr. Marsh died. Ms. Alhadi appeared at the funeral screaming and made an attempt to get into Dr. Marsh's casket with him.

In 2010, Dr. Marsh's trust settled a lawsuit it had brought against Ms. Alhadi. The trust recovered $310,000 in cash, but the home was lost to foreclosure, and she had spent the balance of the money. Ultimately, the IRS caught up with Ms. Alhadi and sent her a notice of deficiency for 2007 and 2008 for over $1 million. She claimed in Tax Court that the funds she received from Dr. Marsh were either loans or nontaxable gifts. The Tax Court agreed with the IRS that they were neither. Rather, the amounts totaling over $900,000 in checks were taxable income subject to self-employment tax. The Tax Court noted that Dr. Marsh never referred to the amounts provided to her as anything other than compensation and that, in any event, she never had any intent to repay the amounts. The funds were also not gifts because any donative intent on Dr. Marsh's part was negated by undue influence. The Tax Court also upheld penalties, including the fraud penalty of I.R.C. §6663.

Avoiding Elder Abuse

The saga of Dr. Marsh and his in-home aide is a sorrowful tale. What steps can be taken to minimize the likelihood of elder abuse happening to a loved one of yours? Consider the following suggestions:

- Keep your eyes and/or ears open. Be alert for situations where a vulnerable person can be taken advantage of. Clearly, in Dr. Marsh's situation, his niece should have taken the time to physically visit him. A surprise visit might be the key to spotting abuse.

- Stay on top of the cognitive ability of the family member. Cognitive ability is not always tied to age, but it's a good idea to have cognitive ability professionally evaluated. Those in cognitive decline can more easily be manipulated by others with nefarious goals.
- Make sure you know the nature and extent of the loved one's assets before in-home or nursing home care begins. Include all assets, including household and personal assets. It's the small things that be taken without anyone noticing. The only way to determine if assets or funds are missing is to know what exists at the start. Then, commit to a periodic review of income and assets.
- It might be a good idea to have a family member control the loved one's mail. Setting up direct deposit for incoming checks, etc., can also be a good idea.
- Monitor receipts. If an aide is buying groceries and supplies, require that receipts be retained and then commit to checking them at least periodically.
- Negotiate a contract with the aide that builds in a vacation. During the time the aide is on vacation, make sure the substitute is not related to or a colleague of the normal full-time aide. The vacation time can tend to reveal issues if the normal full-time aide is not there for several consecutive days.
- Make sure valuables are kept in a safety deposit box or in a safe that the aide can't access.
- Make sure that appropriate legal documents are in place. This includes a power of attorney for financial and health care decisions as well as a will or a trust.

Conclusion

I am sure that the list of planning steps could include additional suggestions. But the basic point is to stay on top of the situation and not leave the family member to the complete discretion of an aide. That can go along way toward avoiding the disastrous elder abuse situation that befell Dr. Marsh.