

ELDER LAW NEWS

Legal power for seniors.

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OAST & HOOK

Offices in
Portsmouth and
Virginia Beach, Virginia
Tel: 757-399-7506
Fax: 757-397-1267
Web: www.oasthook.com



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Editor
Sandra L. Smith
Attorney at Law



Oast & Hook Seminar New Law, New Opportunity



Oast & Hook will host a seminar titled, "Recent Developments In Long-Term Care Planning: New Law, New Opportunity" on Thursday, August 24, 2006, at the Chesapeake Conference Center, 900 Greenbrier Circle in Chesapeake. Registration starts at 8:30 a.m. The workshop begins at 9:00 a.m. and concludes at 12:30 p.m. The seminar will be presented by Oast & Hook attorneys Andrew Hook, Sandra Smith, Jennifer Rossetini, and Letha Sgritta. The seminar will explore the changes the Deficit Reduction Act of 2005 (DRA) and the Virginia implementing rules have made to Medicaid planning, as well as the new opportunities that they provide to obtain assistance in the payment of long-term care while protecting assets.

Register on or before August 1st for an early registration fee of \$15. The registration fee after August 1st is \$30. A registration form is attached to the end of this newsletter.

THE MILITARY'S SURVIVOR BENEFIT PLAN AND THE CHILD WITH DISABILITIES BY RON PEARSON

Hampton Roads has been designated by the U.S. Navy as one of the primary locations for families with disabled children. Thus, when retirement looms for military families in Hampton Roads, many of these families with disabled children face a decision about whether or not to choose the Survivor Benefit Plan (SBP) retirement option.

SBP will pay up to 55% (with annual inflation adjustments) of the military member's retirement pay to a spouse or dependent child. (The member can

select a lesser amount at less cost.) The military member can select between coverage for a spouse only, a spouse and children, or children only. The member pays about 6.5% of the member's retirement pay for SBP for a spouse and only about \$20 per month for dependent children. The member can refuse this benefit only if the member's spouse agrees with the decision in writing.

While SBP is a significant benefit for spouses (because the cost is partially subsidized by the government), it can be problematic if there is a child with disabilities involved. In most cases, a disabled child over age 18 can be designated an Incapacitated Dependent (DD Form 137-5) and, thus, be permanently eligible for Commissary and Exchange privileges as well as TRICARE healthcare.

If the disabled child over age 18 has assets of less than \$2,000 and minimal income, then the disabled child will usually be eligible for Supplemental Security Income (SSI) and Medicaid. Although SSI pays only \$603 in 2006, and Medicaid may seem to duplicate TRICARE, these programs can be critical to the long-term support for a child with disabilities. If a child with disabilities is living independently, SSI pays for food, clothing and shelter, while Medicaid pays for supervision (which can cost in excess of \$40,000 annually in our area), job training and job assistance. Thus, TRICARE does not provide the same benefits as Medicaid; these benefits complement each other for the disabled child.

SSI payments are offset by unearned income to the child with disabilities. Any unearned income over \$20 offsets SSI income dollar-for-dollar. Once SSI income reaches zero, SSI is lost, and, in most cases, Medicaid is lost. If the member dies having chosen SBP only for the disabled child, then the disabled child will receive 55% of the member's income. If that 55% of retirement pay amounts to more than \$623 this year, then the disabled child will lose SSI and Medicaid. If the member and spouse die after having chosen SBP for spouse and child, then the same thing happens.

Some planners have suggested that having the SBP paid into a special needs trust for the disabled child rather than directly to the child. These planners think that this will prevent the child with disabilities from having received the SBP payment and thus avoid the SSI offset. Actually, while the special needs trust would be useful for distributing the money, Social Security considers it to have been received, whether it goes directly to the disabled child, or into the special needs trust for the child, since by law the SBP beneficiary is the child. According to an attorney/lobbyist for people with disabilities in Washington, D.C., Congress would have to change the U.S. Code to allow the trust to "prevent" receipt by the disabled child, and it is unlikely that Congress will do that.

What about just canceling the SBP beneficiary payments? Unfortunately, once they start, there is no way to stop them. I have spoken to a lawyer in the SBP office who said he received panicked telephone calls from surviving relatives of children with disabilities. These relatives complained that the disabled children were losing SSI and Medicaid due to the income from SBP payments. Because the SBP payments were far less than the combined benefits that SSI and Medicaid provided, the disabled child could no longer afford to live independently. While everyone sympathized with their situation, there was nothing that could be done.

These examples illustrate the critical need to understand the impact of SBP on SSI and Medicaid benefits. There are, however, two preventative actions available. The first option is for the military member to select *spouse only* for SBP if the military member chooses SBP, and has a disabled child.

The second option, if the military member has already made an SBP selection including a child, and the military member has a child with a disability, is to apply to the Board for Correction of Military Records to modify the SBP election. This option must be completed while the military member is still alive, because SBP beneficiary payments to the disabled child start upon the military member's death. The member must complete DD Form 149 justifying why the SBP selection option must not include children (i.e., spouse only). For example, the member might tell the Board for Corrections of Military Records that the member did not understand when the member originally made the selection including the child, that there would be a severe negative impact on the disabled child's other benefits. When completed, the DD Form 149 is sent to the respective service address listed on the form. Each individual service has a Board for the Correction of Military Records that meets periodically to review and approve or disapprove such requests.

Military members eligible for SBP who have a child with a disability, should take appropriate action to insure their child remains eligible for current and future SSI and Medicaid benefits!

Editor's note: Oast & Hook thanks Mr. Pearson for his contribution to the *Elder Law News*. Oast & Hook specializes in assisting families with the legal aspects of planning for their family members with disabilities.

About the Author

Ronald S. Pearson, CFP®, is the owner of Beach Financial Advisory Service, a fee-only financial planning firm. He is a retired U.S. Navy Captain who has frequently spoken on this topic nationally and regionally, and he has been quoted in USA Today, Kiplinger's and numerous other media. He has two sons with developmental disabilities.

Boomers! Redefining Life After 50

Oast & Hook is pleased to continue its sponsorship of a series on WHRO-TV titled "Boomers! Redefining Life After 50." This week's episode is "Living the Dream." It will be aired at 4:30 p.m., Saturday, July 29th.

Distribution of This Newsletter

Oast & Hook encourages you to share this newsletter with anyone who is interested in issues pertaining to the elderly, the disabled and their advocates. The information in this newsletter may be copied and distributed, without charge and without permission, but with appropriate citation to Oast & Hook, P.C. If you are interested in a free subscription to the *Elder Law News*, then please e-mail us at eln@oasthook.com, telephone us at 757-399-7506, or fax us at 757-397-1267.

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OAST & HOOK

Presents:

Recent Developments in Long-term Care Planning: New Law, New Opportunity

Date: Thursday, August 24, 2006

Location: Chesapeake Conference Center
900 Greenbrier Circle
Chesapeake, Virginia 23320

Schedule: Registration: 8:30 a.m. to 9:00 a.m.
Workshop: 9:00 a.m. to 12:30 p.m.

Presenters: Andrew H. Hook, Jennifer Rossettini, Letha Sgritta and Sandra L. Smith

Tuition: Register on or before August 1, 2006, for an early registration fee of \$15.
The registration fee after August 1, 2006, is \$30.

Space is limited, so please register as soon as possible. Walk-in registrations will not be accepted.
No refunds after August 1, 2006.

Registration Form

Please complete this form and either fax it to Oast & Hook at 757-397-1267 or mail to Linda Gerber at Oast & Hook, P.C., at 295 Bendix Road, Suite 170, Virginia Beach, Virginia 23452-1294.

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For more information, please telephone Linda Gerber, Vivian Lane or Jennifer Lantz at 757-399-7506.