

## **Medicaid Penalty Period Imposed for Payments Made to a Family Caregiver**

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Ordinarily, when one person renders services for another which are requested and accepted by him, the law creates an obligation on his part to pay reasonable compensation, unless something in the relationship of the parties indicates otherwise. The Commonwealth of Virginia has long held that, absent evidence to the contrary, a child renders service to a parent out of natural affection, and not with a view to compensation.

A Care Agreement is a common tool used by elder law attorneys to compensate a child caregiver. Since these agreements are often integral pieces to a long-term care plan, it is vital to a well-developed long-term care plan that they meet not only contractual requirements, but also comply with the policies of Medicaid and Veteran's Affairs. Recently, in *P.W. v. Department of Medical Assistance and Health Services* (N.J. Super. Ct., App. Div., No. A-4756-11T3, April 29, 2014), an appellate court determined that payments made to a child caregiver were transfers for less than fair market value. In making such a determination, the court found that there was no evidence to support the assertion that transfers were made in exchange for fair market value of services. While a care agreement had been executed to cover services provided by one daughter, such agreement was deemed invalid since it failed to indicate how the rate was determined. Additionally, the care agreement was limited to those services provided by one daughter, and therefore did not cover services rendered by another daughter. The result of the payments made to the daughters for care rendered therefore resulted in a Medicaid penalty.

While Medicaid does recognize the importance of child caregivers and policy provides for some child caregiver exceptions, working with an experienced Elder Law attorney who understands Medicaid is very important. The attorneys and staff of the Hook Law Center regularly assist clients with developing and implementing a long-term care plan for themselves or a loved one. Whether you need assistance with assessing your options, determining if a penalty period may constitute a transfer, curing a penalty period, or filing an application, Hook Law Center is available to meet to discuss your situation.

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### **Dogs' Play – Part 3**

**Hook Law Center:** Kit Kat, what else do you know about dogs' play?

**Kit Kat:** Well, this is my final say on the subject, but there is some interesting information. For instance, Dr. Marc Bekoff, the scientist whose work we have been discussing, says that dogs possess the skill he calls "theory of mind." By this he means they can discern what other animals or people are thinking. He tells of someone pointing to 1 of 2 objects. A dog will almost always approach the object the person was pointing to. Chimpanzees, by contrast, and whom we consider quite intelligent, will not be able to figure that out.

Another example of this "theory of mind" occurs when a dog wants to initiate play. When one dog wants to get another's attention, he/she will run in front of the other dog or nip the dog to get his/her attention. It may sound like a simple thing, but it indicates the dog seeking play can analyze a situation and decide when action is needed or not.

Dr. Brian Hare of Duke University was another scientist who contributed to this theory. He says, "Dogs aren't just smart; they're emotionally complex." It's probably the reason humans can get so attached to them. He agrees with Dr. Bekoff that studying play in dogs is an excellent way to understand dogs as well as people. Play is thought in action. According to Dr. Bekoff, "When we study play in dogs, we study ourselves."

(<http://www.washingtonpost.com/national/health-science/in-dogs-play-researchers-see-hon...>) (5-20-14)

## **Upcoming Events**

- Jessica Hayes will be speaking on Hook Law Center's Practice Area's at Westminster Canterbury on **July 1, 2014** at 10:00 am.
- Hook Law Center will be participating in **Senior Advocate's Art of Healthy Aging Series** held at Westminster Canterbury, 3100 Shore Drive, Virginia Beach VA 23451. This series will be held once a month from July through December. **Andrew H. Hook** will be the featured presenter on **Tuesday, August 5, 2014 at 10:00 a.m.** Mr. Hook will speak on Avoiding Elder Law/Care Pitfalls as well as provide an overview of Hook Law Center's Practice Areas. HLC Attorney Jessica A. Hayes and Shannon Laymon-Pecoraro will also provide an overview of Hook Law Center's Practice Areas at the meetings held on **Tuesday, July 1, 2014 at 10:00 am, Tuesday, September 2, 2014 at 10:00 am, Tuesday, October 2, 2014 at 10:00 am, Tuesday, November 4, 2014 at 10:00 am,** and **Tuesday, December 2, 2014 at 10:00 am.** We look forward to seeing you there!

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