

P E N N S Y L V A N I A LAW WEEKLY

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KEEPING THE GOLDEN YEARS GOLDEN **Divorce over 50 calls for special consideration of government retirement benefits**

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Although 50 might seem like an early age to seriously consider retirement planning, people who have passed that milestone and are getting divorced must make sure they and their attorneys recognize the unique economics that come into play during those years.

Whether negotiating property settlement agreements or litigating matters, counsel must understand the nuances of Social Security benefits, Medicare and Medicaid in order to avoid coming up short in their clients' golden years.

Social Security Benefits

About 96 percent of workers in the United States are covered under the Social Security system. Workers pay Social Security taxes during their working years and earn credits toward Social Security benefits.

A person born in 1929 or later needs 40 credits or 10 years of work to qualify to receive Social Security benefits. If a person stops working, the credit will stay on his or her account and if that person goes back to work later, credits will be added to the person's total.

Age 62 is the earliest retirement age to begin collecting Social Security. However, one should be aware that if one elects benefits at 62, the benefit will be less than if one waited until later to retire.

The Social Security Administration has published a chart that shows who is eligible to collect full Social Security benefits. It is important to know that not everyone qualifies to receive the full benefit at age 65. For those born in 1960 or later the qualifying age is 67.

If retirement is delayed, the benefits will not only continue to accrue, but the benefit grows by 8 percent each year until age 70, the age when one can elect to receive Social Security benefits for those qualifying for full benefits at age 65. A good rule of thumb is that the later one elects to receive benefits, the larger the benefit will be.

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A divorced spouse is entitled to the spouse's benefits as long as the person was married for at least 10 years. For the divorced spouse to collect his or her former spouse's Social Security benefits, he or she must be 62 or older and unmarried.

If the divorced spouse is divorced for at least two years and both the divorced spouse and former spouse are at least 62, both can receive Social Security benefits, even if they are not retired. The benefits secured by a divorced spouse have no effect on the amount of the benefit the former spouse or his present spouse can receive.

When representing a person who is getting divorced in his or her senior years, especially a non-working spouse who was a homemaker, it is crucial to obtain this information before engaging in final settlement discussions or litigation.

If a client has been living a very comfortable lifestyle and at 62 or 65 will receive a percentage of an ex-spouse's benefit, there will be a dramatic drop in that person's income. A calculation to determine final alimony needs or percentage of equitable distribution that can grow over the years, must be accomplished to negotiate from a place of knowledge. The careful practitioner will therefore calculate the Social Security benefit for the dependant spouse when received and make determinations as to whether that person should elect the benefit at 62, which will be a lesser benefit for life or the benefit at 65, which will be higher. Do not lose sight of the fact that the ex-spouse can only secure a percentage of the former spouse's entitlement up to 50 percent. Therefore, when representing a party who is in his or her golden years, the Social Security information is crucial in order to negotiate intelligently. Recently, the government announced that for the first time, there will be no cost of living increase for Social Security recipients for 2010 and 2011. The government also computed that Social Security recipients will actually realize a loss in income because their Medicare premiums are deducted from their Social Security benefits.

Medicare

Medicare is the federal health insurance program for U.S. citizens who reach 65 as well as for people who may have permanent disabilities. The very first point that must be made about Medicare is that a citizen is entitled to this health benefit at 65 whether or not the person is receiving Social Security benefits. Should that person not apply for Medicare benefits at age 65, she will be penalized for each month that application was not made for the life of the benefit.

Part A of Medicare is the hospital insurance that covers one as an in-patient and also covers some skilled nursing facility charges, home health care and hospice care. There is no premium payment for Part A Medicare benefits. Part B covers physician and other medical services such as out-patient hospital care, ambulatory surgical services, X-rays, physical therapy and certain preventative services such as flu shots, mammogram, pap smears and screening for colorectal

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cancer. However, one must check with his or her physician because many of these screening services are only permitted one time in a 365 day period.

The purpose of an attorney learning this information about Medicare is to determine whether the spouse he is representing requires long-term care insurance. Medicare only covers up to 100 days of a nursing home in certain situations. To qualify for home care or a Skilled Nursing Facility an individual must fulfill the requirements for Medicare to pay for a skilled nursing facility. Generally, those requirements are whether the person can perform activities of daily living on his own such as being able to take care of oneself for eating, walking, moving from a bed to a chair, dressing, bathing and making use of toilet facilities. For an attorney representing a dependent spouse, the best thing to bargain for is long-term care insurance because the younger the person is when purchased, the lower the premium.

Regarding health care in later years, the attorney is wise to speak with one's client about a health care power of attorney, also known as a living will, regarding what that person wishes in the event that the person becomes too ill to communicate and/or participate in decisions about his or her health care.

The practitioner and client should be aware that Medicare only covers certain expenses. Many seniors 65 or older elect to purchase a "gap policy," which acts, in certain instances, as a major medical policy except for prescription coverage. Research into what companies offer such policies and the cost and extent of coverage is necessary in order to negotiate or litigate for the anticipated funds it will take for that client to pay those premiums.

There is a Part D of Medicare, prescription coverage, which started under the Bush administration in 2006. The first thing that seniors should be aware of is that between Nov. 15 and Dec. 31, in the year they become 65, they must elect a prescription policy under Part D. Should a person not elect a Part D policy in that timeframe, a penalty will attach that will be included for the duration of Part D coverage.

The practitioner should inquire from a client involved in divorce information as to what drugs that client takes on a regular basis. If that person is reliant on three or more drugs daily, Part D of Medicare is a serious part of the divorce negotiations. Additionally, Medicare does not cover purchase of prescription drugs after the first \$2,510. This part of the year is known as the "donut hole," when the individual pays 100 percent of all prescriptions purchased. After the person pays \$4,050 out of pocket, Medicare Part D kicks back in and pays all but 5 percent of the person's drug costs for the balance of the calendar year. This part of Plan D is known as "catastrophic coverage." There is a significant period of time during the calendar year when a Medicare participant must be fully responsible for payment of all drug costs. The attorney representing a senior, whether or not they have reached age 65, should be aware that a Social Security premium will be deducted for the payment of Medicare Part B; that Medicare does not cover a skilled

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nursing facility beyond a certain amount of days; that a gap policy will be necessary to supplement what Medicare does not pay; and that Part D of Medicare for prescription benefits has premium payments, co-pays, and, a "donut hole" which many seniors who require significant daily medication may not be able to afford.

Medicaid

Medicaid is a federal government program implemented by the states, which basically covers needy people. There is a qualifications test where a person cannot earn more than a certain amount, which is linked to the Federal poverty level. Said people cannot have more than \$4,000 in resources described as cash, checking accounts, and almost anything else other than one's home and one vehicle. There is a program known as QMB or Qualified Medicare Beneficiary where Medicare participants who are determined to be "Categorically Needy" are also eligible for medical assistance in order to pay Parts A and B of their premiums as well as the payment of Medicare deductibles and co-insurance. People receiving Medicare who qualify for this program have a monthly income connected to the federal poverty level of \$923 with a resource limit of \$2,000.

Very few family law practitioners are aware of the parameters concerning Social Security, Medicare, Long Term Insurance Care, Prescription Coverage after age 65 and Medicaid. If one is representing a person 50 or older who is a dependent spouse or a spouse who has been dramatically affected by the recession, one must be aware of this information in order to negotiate and/or litigate properly so that a senior's later years as a divorced spouse are golden and not gray. •

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