



Summer 2009

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Fluffing and The Pooled Trust:

An Appellate WIN for Adults 65+

Fluffing: *v. the act of providing comfort, pleasure and companionship for a nursing home resident.*

Fluffer: *n. a caring person.... whose complete focus during visits with nursing home residents is to provide pleasure and comfort.*

Quality of life is elusive under the best possible circumstances. Even when State nursing home regulations mandate "quality of life" this isn't a given for patients confined in long term care facilities.

Dr. William Thomas, leader of the Eden Alternative and Green House movements, exclaimed: "Nursing homes are built on the assumption that the greatest enemies are disease, disability and decline. However, the true plagues of nursing homes are loneliness, helplessness, and boredom."



OUR SERVICES INCLUDE:

- ***Life Care Planning***
- ***Medicaid and Medicare Advocacy***
- ***Long Term Care Advocacy***
- ***Estate Planning using Wills, Trusts, Powers of Attorney***
- ***Conservatorship***
- ***Estate Administration***

BEARDEN LOCATION!

4931 HOMBERG DRIVE, IN
HISTORIC HOMBERG PLACE,
*please drop by & visit, we'll
make you feel right at home.*



Life Worth Living: The Eden Alternative in Action by Wm H. Thomas, MD.

It has been our experience that nursing home residents enjoy the full attention of a special caregiver or “fluffer.” These are not traditional caregivers—because they do not provide care assistance that is provided by nursing home staff. They are not “sitters,” because there’s very little “sitting” going on. These special individuals are concerned with the “fluffing up” of their patients. Their focus is on actively providing comfort and pleasure.



This type of care need not be 24/7, or even daily. Visits are for several hours, and perhaps scheduled around a time when greater support is especially helpful, such as meals or activities. Fluffers can be invaluable during periods of greater disability, decline, transition from one care level or facility to another, or anytime to improve quality of life in the nursing home.

However, for the unmarried Medicaid patient there is little money remaining after they receive Medicaid benefits. The elder is allowed to keep only \$2,000 in the bank and only \$40 of their income each month. So how do we pay for fluffing that typically costs \$15 to \$18 an hour?

Many of our Life Care families have been able to plan for this type of supplemental care through the funding of a Pooled Trust with the patient’s money for the sole benefit of the elder patient. Created as a part of the spend-down process, the Pooled Trust meets federal and state statutory criteria that exempt the Trust from a Medicaid penalty period.

We have been using this wonderful tool for the past few years. However, recently the Tennessee Medicaid agency, along with other state Medicaid agencies, challenged the pooled trust when used for Medicaid patients over age sixty-five. Obviously, this astonished and incited many of us in the elder law bar.

In our case, Mrs. Elder (not her real name) needed additional attention-fluffing- during a period when she was experiencing greater decline, and perhaps some depression. She was more withdrawn and had lost interest in activities. Visiting three days a week for a 3-4 hour period, her Fluffer took her to see the gardens and sit in the sunshine. She soaked her hands in lavender lotion and manicured her nails. She brushed her hair and helped her win at Bingo. She listened to her stories, validating important memories and feelings, and so much more. The Fluffer also provided one-on-one supervision when Mrs. Elder had a broken arm, but due to her dementia could not remember that she needed assistance in transferring and walking.

After privately paying for her care at home and in the nursing home, Mrs. Elder was almost out of funds. Before applying for Medicaid, she placed \$10,000 in a pooled trust and then submitted her Medicaid application. The Department of Human Services initially denied Medicaid, contending that transfer of assets to a Pooled Trust subaccount triggered a penalty period of three months, or, in the alternative that she had over \$2,000 in assets, and therefore, she was “over resourced.”

We appealed for a Medicaid Fair Hearing. At the hearing we presented testimony and later a tome (a.k.a. written legal brief) explaining why the Pooled Trust is an “exception trust” and authorized by 42 U.S.C. §1396p(d)(4) (C).

To our delight, the Hearing Officer made the right decision! She relied on the plain language of the statute and held that a pooled trust does NOT trigger a penalty period nor is it a countable resource for the Medicaid applicant over age 65. It was a very exciting and important win for Tennessee clients and the elder law bar. We all need some fluff in our lives!



BIG IMPORTANT NEWS FLASH:

Seniors Empowered to Create their Own Stimulus Packages!

The Knox County Office on Aging's One Call Club for Seniors is offering a one year One Call Club Memberships for just \$50. This year only, the OCCS is able to provide a reduced rate for this community service specifically designed to help seniors remain safely in their homes.

What have you spent \$50 on lately? Did it give you the peace of mind that a year of one call access to over 80 pre-screened service providers, negotiated discounted prices, help with arranging for



these services, and follow up to assure the service was satisfactory? Weekly transportation for grocery shopping is also a perk of membership: yes, someone will pick you up and take you to the store and bring you home after... and help you get your groceries to the door. FIFTY DOLLARS! We know many baby boomers that wish they had access to such a service for themselves. To those boomers, we say: Spend \$50 to purchase this for your parents, and know that you have contributed to their comfort and safety, and your own peace of mind.

What have you spent \$50 on lately...?

For more information about the One Call Club for Seniors call the Office on Aging at 865-524-2786, or go online to www.knoxseniors.org/onecall.

The Life Care Library has new additions!

We continue to add to our library of resources on topics related to aging, care giving, and long term care. ***Creating Moments of Joy*** by Jolene Brackey has been very popular. This "journal for caregivers" provides practical insights and tips for caregivers in easy to digest chapters which offer "powerful tools that create positive outcomes".

Understanding Difficult Behaviors: Practical Suggestions for Coping with Alzheimer's Disease and Related Illnesses is another practical text with step-by-step "how-to's" for managing sleep problems, agitation, wandering, paranoia, repetitive actions and other challenging behaviors exhibited by individuals suffering from dementia. Chapters explain possible causes for behaviors and then list a variety of techniques to manage the behaviors. We also now have ***Hard Choices for Loving People***. Recommended by Pat Green, LCSW and Program Director for St. Mary's Residential Hospice, this book provides "plain talk" about healthcare and end of life decision making. Issues focus on the patient with a life threatening illness and decisions about CPR, artificial feeding and hydration, ventilators, comfort care, hospice and many other important topics to be considered.

Announcing the Summer Education Series

Monthly educational programs continue for our Life Care Plan participants. Presented by Elder Care Coordinators, Judy Wyrick and Susie Stiles Wilson, LCSW, these two-hour Saturday programs are designed to support and empower our clients by informing on issues related to aging, care and quality of life. Our group is intimate and our format includes both structured presentations and informal discussion. We provide the handouts, Krispy Kremes, coffee and the support of a wonderful group of families and friends connected by their commitment to positive care giving and self care. We hope our Life Care clients will make plans to attend. Reserve your space by contacting our office at 865-588-3700.

Location: *Our office, 4931 Homberg Drive*

Time: *9 a.m. - 11 a.m.*

MAY 30, 2009: Successful Aging,

Part 2: Resilience is the latest buzzword associated with positive aging. This month's focus is on how to become more resilient using simple strategies. Join us to learn these techniques and add them to your caregivers "toolkit."



JUNE 20, 2009: Young At Heart:

Following up on our Successful Aging series, we will watch an inspiring 2007 documentary (debuted at the famous Sundance Film Festival) about a group of older adults who have mastered successful aging, the "Young At Heart" Chorus. This film will stimulate and inspire us to think and plan for our own successful aging path.

JULY 18, 2009: Caring for a Loved One with Memory Loss: This program will focus on strategies to care for and support loved ones suffering from dementia. We will include tips for communication, managing challenging behaviors, and maintaining positive connections with loved ones in later stages of this illness. Self care strategies to de-stress will also be highlighted.

AUGUST 22, 2009: Coping with Loss:

Loss is something that we deal with each day in every season of life, and yet we struggle with it, and somehow never become accustomed to its consequences. Loss comes in many guises as we age. Our discussion will instruct about loss and the grief recovery process, and will offer practical skills for healing and adapting to losses, and for supporting others in their healing.



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Visit: www.MonicaFranklin.com Call: 865.588.3700

Greetings! What a beautiful spring we are having this year in East Tennessee! Elder Care Coordinators, Judy and Susie, our resident green thumbs, worked in the pouring rain this winter to plant red and white striped tulips in front of our building. (I watched from my warm dry car but treated them to Naples afterwards.) We've reaped the rewards of their labor with beautiful flowers blooming all spring.

Tulips and daffodils have been a welcome relief from the doom and gloom of the newscasts. People often ask me: "How are your elderly clients doing in this economy?" My older clients are fine. The "Greatest Generation" learned early in life to stretch a dollar, to avoid or pay off debt—including their homes, to save, and to invest conservatively.

Many are enjoying the benefits of living at home longer with additional care and community resources. Fortunately, our friends in the assisted living business are more willing to negotiate and offer great value at a reasonable price. Our main challenge is to convince our older clients that "this is the rainy day for which you saved," so let's "use the money you have today to pay for the care you need today." It's a plan that works and brings quality care and quality of life to those elders we serve. We appreciate each and every one of you.