



Elder Law, Probate Litigation and Special Needs Planning

October 2025 Newsletter

New Appellate Decision Highlights Importance of Medicaid Clinical Eligibility

When most people think about Medicaid, they focus on the financial component — income and asset limits that determine eligibility. For some Medicaid programs, however, the focus needs to be on both financial and clinical eligibility requirements. For example, older adults applying for Medicaid to cover the cost of long-term care need to place equal importance on establishing clinical eligibility. A recent appellate case has brought this issue into sharper focus, underscoring how critical it is for applicants to the Long-Term Services and Supports (“LTSS”) Program meet medical and functional requirements in addition to financial ones.

Understanding Medicaid Clinical Eligibility

To qualify for long-term care Medicaid, an individual must satisfy both financial and clinical eligibility requirements. For clinical eligibility to be established, the applicant must require nursing home level of care. This determination is made through a Pre-Admission Screening (PAS), which evaluates a person’s ability to perform Activities of Daily Living (ADLs) such as bathing, dressing, eating, toileting, and mobility. Clinical eligibility is established when an applicant requires hands-on assistance with at least three (3) of their ADLs.

In other words, applicants who do not require hands-on assistance with three (3) or more ADLs will be considered ineligible for long-term care Medicaid, even if they clearly cannot live safely on their own. This creates a troubling gap for individuals who fall between the cracks: they are not “disabled enough” to qualify for Medicaid-covered long-term care, yet they lack the financial means to pay privately for the care they need.

The Recent Appellate Case: A Cautionary Tale

In the recent appellate case, the court examined an individual who was denied Medicaid benefits based on a finding that they did not meet clinical eligibility despite significant functional limitations. The person could complete some Activities of Daily Living, but required frequent prompting, oversight, and assistance to remain safe.

The appellate court’s analysis highlighted the nuanced nature of the PAS process, emphasizing that clinical evaluations must take into account not just physical capability, but also cognitive function, safety awareness, and the ability to perform tasks consistently without supervision.

What This Means for Families and Applicants

This case serves as an important reminder that Medicaid eligibility for long-term care applicants is not just about income and assets. Families should be prepared to address both financial and medical components when applying for long-term care coverage. Accurate documentation of medical conditions, care needs, and assistance required with Activities of Daily Living can make a significant difference in the outcome of a clinical eligibility review.

If a PAS assessment seems inconsistent with the applicant’s true care needs, it may be worth seeking a reassessment or appealing the decision—especially when safety or cognitive decline are factors.

As this appellate decision illustrates, Medicaid clinical eligibility is a complex and often misunderstood area of law. **The Elder Law attorneys at Mandelbaum Barrett PC** understand both the financial and medical components of eligibility and can help individuals and families with navigating the system. The right advocacy can ensure that applicants receive the care and benefits they truly need—and that those who can no longer live independently are not left without vital support.



Richard Miller and Shawna Brown Co-Author Article on Special Needs Trusts for Exceptional Parent Magazine

Richard Miller, Esq., Co-Chair, and **Shawna Brown, Esq.**, Counsel in the Special Needs Practice Group at Mandelbaum Barrett PC, co-authored an article in the September issue of Exceptional Parent magazine on an important topic: **Special Needs Trusts**.

In the piece, they explain:

- The different types of special needs trusts
- Why selecting the right trustee is critical
- What expenses a trust can cover to enhance quality of life

Special Needs Trusts are vital tools for protecting benefits and ensuring long-term support for loved ones with disabilities. Working with an experienced attorney can help families navigate complexities and create a trust tailored to a beneficiary's lifetime needs.

[Read the full article here.](#)



Arla Cahill Authors Article on Basic Rights in Special Education for Exceptional Parent Magazine



“Parents of children with disabilities face numerous challenges in securing the appropriate educational services and support their children need to thrive academically.”

In the October issue of Exceptional Parent magazine, Arla Cahill, Chair of Education Law and Co-Chair of Special Needs at Mandelbaum Barrett PC, discusses the basic rights in Special Education that every parent should know.

Her article provides an overview of key federal protections under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act, empowering parents to advocate effectively for their children’s educational needs.

[Read more in Exceptional Parent magazine.](#)



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How Continuing to Work Affects Social Security Benefits

As more Americans redefine what retirement looks like, many are choosing to continue working even after they begin receiving Social Security benefits. Whether it's for additional income, personal fulfillment, or simply a desire to stay active, the decision to work while collecting benefits is increasingly common — but it comes with important financial and legal considerations.



Key Takeaways

- Working while collecting Social Security may increase your lifetime benefits but can lead to temporary reductions if you claim early.
- Taxes, Medicare enrollment, and overall retirement planning must be factored into your decision.
- A thoughtful strategy tailored to your unique situation can help you maximize both your income and your benefits.

The Upside: Financial and Lifestyle Benefits

Boosted Income:

Social Security benefits alone may not be enough to meet today's cost of living. Continuing to work can provide essential supplemental income, help delay withdrawals from retirement accounts, and increase financial stability.

Higher Future Benefits:

Social Security calculates your monthly benefit using your 35 highest-earning years. If you're still working and earning more now than you did earlier in your career, those higher earnings could replace lower-earning years in the calculation — permanently increasing your benefit.

Mental and Social Engagement:

Work isn't only about money. Many older adults find that staying in the workforce helps maintain a sense of purpose and provides valuable structure and social interaction, all of which contribute to better mental health.

The Downsides: Know Before You Earn

Temporary Benefit Reductions:

If you begin collecting Social Security before your full retirement age (FRA), your benefits may be reduced based on how much you earn. For example, in 2025, your benefits will be reduced by \$1 for every \$2 you earn above \$23,400. The good news? Once you reach FRA, your monthly benefit will be recalculated to give you credit for the months when benefits were withheld.

Tax Consequences:

Earning too much could make a portion of your Social Security taxable. If your combined income exceeds \$34,000 (individuals) or \$44,000 (married filing jointly), up to 85% of your benefits could be subject to federal income tax.

Medicare Implications:

Working beyond age 65 may affect when you need to enroll in Medicare. While Part A is typically premium-free, failure to enroll in Part B and D on time — depending on your employer's coverage — can lead to penalties. Higher income may also result in increased Medicare premiums.

Is Working While Collecting Right for You?

Consider working if you:

- Enjoy your job and want to stay active
- Need extra income to support your lifestyle
- Are in good health and expect to live well beyond retirement age

You may want to delay benefits if you:

- Are earning significantly more than the annual limits
- Wish to avoid taxation of your benefits
- Want to maximize your future Social Security payout

Plan Ahead with Professional Guidance

Whether you're already collecting Social Security or planning to retire soon, it's important to consider how continued employment affects your financial picture. Benefit reductions, taxes, and Medicare are just part of the equation — your long-term goals and personal circumstances matter just as much.

Our Elder Law attorneys work closely with individuals and families to craft customized plans that reflect their unique needs, values, and long-term goals.

Contact us to start planning or to review your current retirement strategy in light of Social Security and work considerations.



TONY BENNETT'S ESTATE DISPUTE: LESSONS IN EXECUTOR CHOICE

Shawna A. Brown, Counsel in the **Elder Law Practice Group** at Mandelbaum Barrett PC, examines the unfolding estate dispute of legendary singer Tony Bennett and the important estate planning lessons families can take away from it.



A LEGACY COMPLICATED BY LITIGATION

Tony Bennett died in 2023 at age 96. Known worldwide for his timeless hit “I Left My Heart in San Francisco” and celebrated late-career performances alongside Lady Gaga, Bennett’s estate plan has not been left in a court in New York, where his family is battling over his legacy.

Bennett prepared an estate plan which gave a specific sum to his widow and directed the remainder be divided among his four children, consisting of two sons from his first marriage and two daughters from his second. Bennett’s estate plan made clear that his daughters were to have no decision-making power over his estate or trust, but his sons could. One son ultimately assumed control of the estate and trust, valuing it at \$12 million. Bennett’s daughters strongly contest that figure, pointing to Bennett’s continued earnings in his nineties, reportedly as high as \$100,000 per performance. The daughters have now taken the matter to Surrogate’s Court, demanding a full accounting and alleging their brother paid himself outsized fees as trustee.

LESSON ONE: CHOOSING THE RIGHT FIDUCIARY

One of the clearest lessons from this dispute is the importance of who is chosen to administer an estate or trust. Parents often appoint one child, assuming they will act fairly, but this can create conflict if siblings do not trust that person or feel excluded or uninformed. In cases involving significant wealth—like Bennett’s—appointing a neutral party, such as a trusted neutral relative professional fiduciary or a financial institution can reduce family tensions and promote transparency.

LESSON TWO: BENEFICIARIES HAVE RIGHTS

Even when one sibling is placed in charge and there are concerns about his actions, beneficiaries are not without recourse. They can demand an accounting from the executor or trustee, requiring disclosure of estate income, distributions and expenses. If the fiduciary refuses, beneficiaries can petition the court to direct production of a formal accounting, as Bennett’s daughters are doing now. This safeguard helps ensure that all heirs are informed of the activities of the estate or trust and can seek a court order directing a fair distribution.

ESTATE PLANNING IS MORE THAN JUST DOCUMENTS

Tony Bennett’s situation underscores that estate planning is not only about distributing assets—it’s also about choosing the right people and structures to manage them. Families who anticipate conflict should consider neutral fiduciaries. And for beneficiaries who suspect mismanagement, legal remedies are available.

At Mandelbaum Barrett PC, the **Elder Law team** guides clients both in creating effective plans and in resolving disputes when things don’t go as intended, helping families secure the legacy their loved ones intended.

You can reach Shawna A. Brown at sbrown@mblawfirm.com or at 732-317-0720.

[Watch the full YouTube video here.](#)



The Alliance of Private Special Education Schools of North Jersey's Special Needs Resource Fair & Family Fun Day

Our Special Needs Practice Group was honored to once again participate in The Alliance of Private Special Education Schools of North Jersey's Special Needs Resource Fair & Family Fun Day at **William Paterson University of New Jersey**.

Donald "Donny" A. Dennison, Esq. and **Blake Hamilton** had a wonderful time connecting with families, educators, and community partners. We are proud to support such a meaningful event that provides resources, advocacy, and empowerment for individuals with special needs and their loved ones. Thank you to The Alliance for another impactful day - Mandelbaum Barrett PC is grateful to be part of this important mission!

Mandelbaum Barrett PC Celebrates Bayonne Expansion with Ribbon-Cutting Ceremony



Earlier this week, **Barry Mandelbaum**, Chairman of the firm, **Cheryl Burstein**, COO, Richard Miller, Elder Law Chair and Executive Committee member, and **Susan Lee**, Real Estate Counsel, proudly joined City officials in celebrating a major milestone – the ribbon-cutting ceremony for Mandelbaum Barrett PC’s expansion into Bayonne, NJ.

We are honored to welcome **Linda Hockstein**, a respected Bayonne real estate attorney, who has joined the firm as a Partner. Linda carries forward a remarkable four-generation family legacy of serving the Bayonne community. From her great-grandfather, Joseph Hockstein, who built the historic DeWitt Theater, to her grandfather and father’s long-standing insurance agency on Broadway, Linda’s roots in Bayonne run deep.

Founded in Newark in 1930, Mandelbaum Barrett PC has grown into a nationally recognized firm headquartered in Roseland, with offices across New Jersey, New York, Florida, and Colorado. As a full-service law firm, we proudly serve clients in Real Estate, Land Use/Zoning, Trusts & Wills, Elder Law, Family Law, Personal Injury, Special Needs, and more.

Bayonne Mayor Jimmy Davis shared his support:

“The firm’s decision to expand its operations to Bayonne is a sign of our community’s growing importance in the regional economy.”

We are excited to deepen our roots in Bayonne and Hudson County and continue a legacy of service, excellence, and community commitment.

[Read more here.](#)

Special Olympics New Jersey Plane Pull

Team Mandelbaum proudly joined this year's Special Olympics New Jersey Plane Pull — an inspiring event where teams unite to test their strength, teamwork, and determination by pulling a United Airlines 737 jet down the runway. More than just a challenge, this event raises critical funds to support year-round sports training, competitions, and health programs for thousands of Special Olympics athletes across New Jersey.

Our team gave it their all, pulling the plane the full distance in 9.68 seconds, placing us in the middle of the pack for speed out of forty teams. But what truly stood out was our impact off the runway — Team Mandelbaum took 2nd place overall in fundraising, raising an amazing \$8,402 for Special Olympics New Jersey!

A huge thank-you to everyone who participated, donated, and cheered us on — your energy and generosity made this possible.

*Together, we're stronger.
Together, we pull for a purpose.*



**Special
Olympics**





 Beneficiary Designations in Estate Planning

 **November 10th, 2025**

 **1:00 PM (ET)**

Richard Miller, Chair of our Elder Law Practice at Mandelbaum Barrett PC, will be co-presenting in a **BARBRI** CLE webinar on Beneficiary Designations in Estate Planning.

Beneficiary designations may seem straightforward, but they can dramatically alter the outcome of an estate plan if not handled carefully.

KEY TOPICS INCLUDE:

-  **Transfer-on-Death (TOD) & Payable-on-Death (POD) designations**
-  **IRAs & retirement account planning**
-  **Impact of the SECURE 2.0 Act**
-  **Best practices to avoid conflicts with wills and trusts**

 [Learn more and register here.](#)

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11th Annual TAX, TRUSTS & ESTATES FORUM

- 2025 Tax Reform
- Federal Bill Breakdown
- New Jersey Tax Updates
- Mansion Tax Insights
- Angel Tax Credit
- Section 1202 (QSBS) Update

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25

YEAR

TAX, TRUSTS & ESTATES FORUM

At this year's Forum, we'll break down the sweeping changes in the One Big Beautiful Bill Act of 2025 and what they mean for your clients—covering everything from federal reforms and New Jersey-specific updates to the 3% Mansion Tax, the state's adoption of the Section 1202 QSBS exclusion, and the new Angel Tax Credit. You'll gain practical insights into shifting income and gifting strategies, explore fresh opportunities for investors, and understand how rising property values and evolving tax laws reshape planning in real time.

With special guest speakers and industry leaders joining our attorneys, every session is designed to equip you with the knowledge and tools to guide clients confidently through a rapidly changing tax landscape.

Seats are limited — reserve your spot today to stay ahead of the changes and give your clients a clear path forward.

[RESERVE YOUR SPOT!](#)

MEET OUR TEAM



Team Mandelbaum

Make sure to check out our new resources section at the bottom of the Elder Law and Special Needs pages on our website.

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SPECIAL NEEDS

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