

Elder Law Advisor

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A Mother's Dilemma: Planning for the Special Needs Child

As an Elder Law attorney for over 15 years, I have worked with thousands of older people and their families. But some situations are especially memorable, and Elinor and Tommy's is one of them.

When Elinor first came to see me, she told me that she and her husband had tried for some time to have a child, without success. They decided to adopt, and after a period of time, they were blessed to be able to adopt a healthy baby boy, whom they named Tommy. It seemed that their fondest wish had come true.

When Tommy reached age 3 months, Elinor took him to the doctor for a routine check-up. Tommy was pronounced to be in excellent health. He received the usual three-month immunizations, and went home.

A fever is always a source of worry and sleepless nights for a parent. Thankfully, in most cases they are not serious and do not last long. But Elinor's worry turned to dread as Tommy's fever soared, and he became listless. She took him to the hospital, where he was diagnosed with a brain infection, a very rare, but serious complication from the immunization. Tommy survived. But the doctors had grim news: baby Tommy's ordeal had almost certainly left him with brain damage. This was in the early 1970's, and the doctors had no way to estimate the degree of damage. They would just have to wait and see.

As it turned out, Tommy's illness had left him mentally retarded. His adoptive parents vowed to give him the best care and quality of life. But they could not know the toll it would take on them, and on their marriage. They ultimately divorced, and the father passed out of Tommy's life.

As Tommy became a young adult, he expressed a wish to live independently. In his early 20's he moved into a group foster home. The problem was, the cost of the group home was more than the monthly income he received from the vaccine injury settlement. So Elinor began to withdraw her retirement savings to pay Tommy's care bill. And she had come to see me, she said, because as of the next month's payment, her retirement savings would be completely gone. She had spent it all trying to fulfill her promise of quality of life for her son.

The solution lay in a special needs trust for Tommy. His monthly income from the vaccine injury settlement went into the special needs trust. From there, it could be used to pay for goods and services that would improve his quality of life. Using the trust, we were able to get him qualified for Social Security benefits and Medicaid to help pay the adult foster home. We were even able to reimburse Mom for some of her retirement savings. Tommy lives with dignity and independence. Mom has peace of mind. And I have the satisfaction of knowing I made a difference.

Do you know someone with a special needs child? If so, please give him or her a copy of this article. When quality of life is everything, Special Needs Planning can make all the difference.

Elder Law is Special Needs Planning

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