



## I. INTRODUCTION

You have asked for my opinion about whether [REDACTED], P.C. (“[REDACTED]”) acted negligently in its representation of the plaintiffs, [REDACTED], et al. (“Plaintiffs”). For purposes of my Report, you have requested that I focus upon the measure of damages, if any, exclusive of attorneys’ fees incurred, proximately caused by the alleged negligence of the [REDACTED] firm in its representation of the Plaintiffs. My opinions are based upon the facts as averred in the Plaintiffs’ Complaint, except where specifically so stated, the authority cited in my report, the documents supplied, which will be cited where discussed, and my understanding of the policies and practices as enacted and applied for the federal-state Medicaid program in New Jersey. I will also accept as accurate parts of the legal discussion contained in Plaintiffs’ expert report submitted by [REDACTED] (“[REDACTED]”), except where I expressly take issue. My understanding of the subject-matter is based upon my more than 38 years of experience practicing and teaching in the areas of Estate Planning and Health Law. My qualifications to render an opinion are described briefly at the end of my report and in my detailed *curriculum vitae* which is appended.

I have not previously testified as an expert. However, I previously have been retained as an expert by the Pennsylvania Disabilities Rights Project, plaintiffs’ class counsel in the federal class action, *Smith v. The Pennsylvania Department of Public Welfare*, Civil Action No. 2:13-cv-5670-AB, and by defense counsel in [REDACTED] v. [REDACTED], *et al.*, Phila. C.C.P. No. [REDACTED] of 2018. Defendants’ counsel have agreed to compensate me at the rate of \$450.00 per hour to prepare my report and testify, if necessary, and to reimburse my reasonably incurred expenses.

## II. THE MEDICAL ASSISTANCE ACT

Given the complexity of the law and lack of precision in the discussion of the applicable legal authority in the ██████████ Report and the Office of Administrative Law (“OAL”) Initial Decision, I begin my report preliminarily with a discussion of the relevant requirements of the Medical Assistance Act which are essential to understand the opinions I offer.

The Medical Assistance Act (“Medicaid”), Title XIX of the Social Security Act (“the Act”)<sup>1</sup> was established in 1965 to provide federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons. “Medicaid is a cooperative federal-state program through which the federal government provides financial assistance to states that may furnish medical care to needy individuals.”<sup>2</sup> Participation in the program is voluntary, but if a State chooses to participate, it must abide by federal statutory and regulatory requirements. It is designed to provide medical assistance to persons whose income and resources are insufficient to meet the costs of necessary care and services.<sup>3</sup> New Jersey enacted legislation in 1968 establishing the New Jersey Medical Assistance and Health Services Act.<sup>4</sup>

To receive federal funding, each participating State must develop a “State plan” for determining eligibility for medical assistance. State Medicaid plans must comply with requirements imposed both by the Act itself, the regulations promulgated by the Secretary of Health and Human Services (“HHS”),<sup>5</sup> and guidelines issued by the Administrator of the Center for Medicare and Medicaid Services (“CMS”). Section 1396a of Title 42 governs state Medicaid plans. Specifying what a “State plan for medical assistance *must*” do, the provision places many mandatory obligations on the states, but it also leaves some areas to the states’ bounded discretion.<sup>6</sup>

All participating states must cover “categorically needy” individuals. These are individuals whose income is so low, they qualify for public financial assistance through the Supplemental Security Income (SSI) program, or other programs.<sup>7</sup> In New Jersey, these individuals are called the Medicaid Only (“MO”).<sup>8</sup> Participating states may choose whether to cover the “medically needy.” These are individuals whose income exceeds the income limits to qualify as categorically needy but who pay monthly medical expenses in an amount which reduces their monthly income to \$425.00 (133% of the Aid to Families with Dependant Children (:AFDC’)) during a period not to exceed six months. This process is referred to as the “medically needy spend-down.”<sup>9</sup> States that choose to cover the medically needy are also bound by additional federal requirements.<sup>10</sup> At the time the events of this controversy occurred, New Jersey had chosen to cover the medically needy through its Medically Needy Program.<sup>11</sup>

### III. ██████████’S ELIGIBILITY FOR MEDICAL ASSISTANCE

At the time Ms. ██████████ retained the ██████████ firm, her income exceeded the categorical income limits. Given her medical condition, she incurred or would incur medical expenses in an amount sufficient to reduce her income to the medically needy income level under federal law pursuant to the methodology prescribed by New Jersey in the code sections cited. *See n. 9.* Accordingly, at the outset, she qualified for medical assistance through New Jersey’s Medically Needy Program as a matter of fact.

██████████’s report incorrectly cited 42 C.F.R. §435.725 as the federal authority governing the spend-down requirements in this matter. This error is notable for two reasons. First, the federal code section cited by ██████████ governs the categorically needy - not the medically needy, which instead is governed by 42 C.F.R. § 435.811. Second, it governs the

*post-eligibility* treatment of the individual's income once the individual is determined to be eligible - not the initial determination *itself*.

This is important because one of the issues that the OAL eventually addresses is whether the income diverted to the trust is countable in determining Plaintiff's initial eligibility. ██████████'s confusion over the application and interpretation of the medically needy spend-down to establish initial eligibility permeates his report. For example, ██████████ states that "[i]ncome paid to a SNT continues to count against income limits of the trust beneficiary...." and he cites *J.P. v. DMAHS*.<sup>12</sup> However, that case held only that income irrevocably assigned to a SNT may not be counted towards the medical assistance ("M.A.") recipient's liability for the cost of care in the post-eligibility treatment of income. That court neither decided nor addressed whether income which is merely transferred, but not assigned to a SNT, may be counted towards income eligibility limits in the initial eligibility determination, even though DMAHS claimed it did.

To the contrary, *J.P.*, in dicta, may be read to support the assertion that income which is merely transferred to a SNT does not count towards income limits. Notably, the Court cited with approval a letter from the Health Care Financing Administration ("HCFA") (now CMS) which stated, "where a trust meets the requirements of one of the exceptions [including a supplemental needs trust,] *income placed in that trust is not counted as income to the individual for Medicaid eligibility purposes.*" (Emphasis added). The Court further stated that such interpretive letters are entitled to deference and further stated that the letter was consistent with the State Medicaid Manual (SMM) provisions which the Court adopted in holding the income may not be counted. Those provisions also expressly provide that the policies pertaining to

treatment of income include *not counting for eligibility purposes income before it is placed in trust.*<sup>13</sup>

The SMM, published by CMS, expressly authorizes the use of trusts funded solely with income belonging to an individual pursuant to 42 U.S.C. §1396p(d)(4)(A) in order to establish income eligibility for nursing facility and Waiver services - even in states that provide benefits to the medically needy.<sup>14</sup> This was expressly accepted by the Superior Court in *J.P. v. DMAHS.*<sup>15</sup> At least one federal court has recognized that federal authority suggests that income which is merely transferred to a SNT may not count in determining the initial eligibility.<sup>16</sup> While no court in New Jersey has ever addressed the precise issue decided by the *Wong* court, the *J.P.* decision is consistent with *Wong* which acknowledged that “[i]t is fundamental that the State Medicaid system must be consistent with, and no more restrictive than, the federal system.”<sup>17</sup>

I believe the forgoing undermines the basis of ██████████’s conclusion that ██████████ was negligent in failing to establish Plaintiff’s initial eligibility. More importantly, this same confusion over spend-down also permeates Judge Russo’s Initial Decision dated December 15, 2015. Although this misconstruction of the law has little effect on what I will describe to be the measure of damages in Section IV, I believe it negates ██████████’s conclusion that the “Defendants’ greatest failing [was] disqualifying ██████████ for Medicaid.”

It is true that ██████████ could have qualified for Medicaid at the outset for the nursing facility services provided to her by Hunterdon Care Center (“Hunterdon”) had ██████████ just followed the more usual spend-down practice as provided by N.J.A.C. 10:70-6.1, 6.2. However, having said that, it does not follow that the advice and planning methods employed by ██████████

*disqualified* ██████████ for Medicaid. First of all, the ██████████ firm originally was retained to qualify ██████████ for the New Jersey Traumatic Brain Injury (“TBI”) Waiver Program to pay for the placement and care at the Universal Institute, Inc. in Long Branch, New Jersey. Given ██████████’s income, that could not be accomplished without diverting income to what has become accepted by New Jersey as a Qualified Income Trust (“QIT”). Secondly, the drafting of the Trust and the transfer of income to the Trust actually should have been found to establish her eligibility under applicable federal law, both for the TBI Waiver Program and the services provided by Hunterdon.

Ironically, as ██████████ mentions in his report, New Jersey, in a formally issued Communication in 2014, officially adopted the use of the Qualified Income Trust (QIT), essentially equivalent to the Trust prepared by ██████████, as the only method for the medically needy to qualify for long term care services. New Jersey stated in its Communication that income properly diverted through a QIT is not counted in determining the initial eligibility for Medicaid for Managed Long Term Care Services and Supports (“MLTSS”).<sup>18</sup>

For the forgoing reasons, there was no negligence in this aspect of the representation in my opinion.

#### **IV. THE MEASURE OF DAMAGES**

Although I assert that the ██████████ Trust effectively excluded income for purposes of determining Ms. ██████████’s income eligibility, no trust, including the QIT- equivalent trust ██████████ prepared for ██████████, will serve to shelter or preserve income which is merely transferred, but not assigned to it. The fact that ██████████ attempted to assign the income to the trust does not by itself result in damages to ██████████. For purposes of the following discussion focusing on

damages, I will assume that both Ms. ██████'s Social Security and her New York Teachers' Pension were merely transferred, but not assigned to the ██████ Trust. This assumption will result in what I believe to be the greatest measure of damages.

I would note however that given the evidence in this case surrounding the assignment of the Teachers' Pension, it remains unclear to me as a matter of fact or as a conclusion of law that the Teachers' Pension was not effectively assigned to the ██████ Trust given the discussion and holding in the OAL Initial Decision in *M.B. v. DMAHS* which is almost directly on point.<sup>19</sup> While it is true the decision was reversed by the Director in the Final Decision, her decision predated the Superior Court's decision in *J.P. v. DMAHS* which completely rejected the same argument the Director articulated in *M.B.*. That Final Decision also appears to be in complete conflict with *J.P.*<sup>20</sup> If the pension had been properly assigned, it would have only served to mitigate whatever damages, if any, that were proximately caused by ██████'s negligence.

Be that as it may, once an individual is determined to be eligible for Medical Assistance, as Ms. ██████ should have been based upon a correct application of the law discussed above, a recipient's income is evaluated post-eligibility to determine the recipient's liability to pay for long-term care services. A recipient for Medicaid-covered long-term care in a medical institution must apply all of her countable income towards her cost of care except for a nominal personal needs allowance, which was \$35 per month in New Jersey at the time of Ms. ██████'s admission to Hunterdon.

The federal requirements governing the post-eligibility treatment of income are found at 42 C.F.R. §435.725 for the categorically-needy and 42 C.F.R. §435.832 for the

medically needy. There are no equivalent post-eligibility provisions in New Jersey for the medically-needy, presumably because the medically-needy, prior to the adoption of the QIT, had to spend down pre-eligibility. The post-eligibility rules in New Jersey for the Medicaid Only (categorically-needy) are found at N.J.A.C. 10:71-5.7. They mirror the federal methodology for the post-eligibility treatment of income for the categorically-needy and medically-needy cited above. If New Jersey had disregarded Ms. ██████████'s income in the initial eligibility determination as it should have, the income would still have been required to be spent towards the cost of her care by application of the post-eligibility treatment of income determination rules, much in the same manner as is currently required pursuant to New Jersey's new QIT treatment of income process

██████████ claims that "Defendants' malpractice caused plaintiffs to incur substantial losses. Defendants incorrect advice disqualified ██████████ for Medicaid. In turn ██████████' disqualification led directly to plaintiffs' entering into a consent decree to pay HCC [Hunterdon] \$172,931.22." <sup>21</sup>

Hunterdon sued plaintiffs' only for the income which it claimed it was due. Therefore, it appears according to ██████████, the substantial "losses" that the plaintiffs incurred was the total amount of income Ms. ██████████ received that was transferred to the trust ██████████ prepared (██████████ Trust") which instead should have been paid to Hunterdon, either as part of the initial eligibility medically-needy spenddown or as part of the post-eligibility treatment of income. Accordingly, ██████████ seems to be arguing that the measure of damages is the income that was owed, but not paid to Hunterdon, whether upon advice of counsel or otherwise. I would note there is no evidence that ██████████ advised plaintiffs how that money may be used. Even if

there was, it would not change my opinion there were no proximately caused damages resulting from the use of the diverted funds.

The [REDACTED] Trust provided by its terms that the income and/or principal of the trust was to be used for the sole benefit of Ms. [REDACTED] during her lifetime. At her death, any remaining principal and accumulated income was to be paid to the State of New Jersey and any other state that paid medical assistance to her.

The OAL Initial Decision found that the Trust paid \$600.00 per month for private aide services and \$250.00 per month for transportation services for Ms. [REDACTED] to visit family. It is not clear based upon the documentation what the total of these expenses were. The Administrative Law Judge also found the [REDACTED] Trust repaid Ms. [REDACTED]'s mother \$25,000.00 for expenses she paid on behalf of her daughter. In addition, discovery has revealed that \$45,000.00 from the Trust was paid for legal fees. Despite the fact the funds from the Trust were not paid to Hunterdon, but should have been, in no way should be considered "losses" or a measure of damages. The whole purpose behind the adoption of the exception for excluding special needs trusts by Congress was to permit the use of properly excluded assets (including income) to enhance the quality of life for disabled individuals. Presumably, the plaintiffs used the assets in this manner and accordingly, it must be concluded that all of the trust expenditures directly benefitted Ms. [REDACTED] and her family. The fact that Hunterdon was still owed money and pursued its collection does not mean that this resulted in losses to the plaintiffs.

Normally in a legal malpractice case, the measure of damages is based upon what benefit the plaintiff would have obtained had no malpractice occurred.<sup>22</sup> In this case, the only benefit that Ms. [REDACTED] could have obtained was to shelter her income to supplement her care.

However, that was not legally possible. No matter what ██████ could have done, ██████'s income would be owed to the nursing facility. The fact that she used it otherwise seems to be besides the point.

## V. CONCLUSION

Assuming the facts in a light most favorable to the plaintiffs, and the governing State and federal law at the time, ██████'s representation should have resulted in Ms. ██████ qualifying for the State's TBI Waiver program and the long term care services provided by Hunterdon. However, there was no possibility that any representation would serve to preserve Ms. ██████'s income to supplement the care paid by Medicaid. Nevertheless, since Ms. ██████ was sued only for her income, from which she directly benefitted, it cannot be argued she incurred any losses beyond the legal fees she paid from which it appears she received no benefit.

May 9, 2019

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Stephen A. Feldman

## NOTES

1. 42 U.S.C. § 1396 *et seq.*.
2. *Wilder v. Va. Hosp. Ass'n*, 496 U.S. 498, 502 (1990).
3. *See Atkins v. Rivera*, 477 U.S. 154, 156 (1986).
4. N.J.S.A. 30:-4D-1 *et seq.*
5. *See* 42 U.S.C. §1396a(a)(17).
6. For example, section 1396a(a)(8) requires states to “provide that all individuals wishing to make application for medical assistance under the plan shall have an opportunity to do so, and that such assistance *shall* be furnished with reasonable promptness to *all* eligible individuals” (emphasis added).
7. *See Roach v. Morse*, 440 F. 3d 53, 59 (2d Cir. 2006) (Sotomayor, J.)
8. N.J.A.C. 10:71-1.1 *et seq.*; *see also*, ██████████, p. 6.
9. 42 U.S.C. §1396b(f)(1); 42 C.F.R. § 435.800 *et seq.*; N.J.A.C. 10:70-4.1, 4.3, 6.1, 6.2; *compare* ██████████, p. 6, incorrectly citing 42 C.F.R. §435.725 *et seq.* (*Post-Eligibility Treatment of Income for the Categorically Needy*) (emphasis added).
10. *See, e.g., Lewis v. Alexander*, 685 F.3d 325, 332 (3d Cir. 2012); *see also* 42 U.S.C. §1396a(a)(10)(C)(i)(III) and 42 C.F.R. §435.800 *et seq.*.
11. *See* N.J.S.A. 30:4D-3i(8); N.J.A.C. 10:70-1.1 *et seq.*; *see also*, ██████████, p.6.
12. *J.P. v. DMAHS*, 392 920 A.2d 707, 392 N.J. Super. 295 (App.Div 2007); ██████████, p. 6.
13. *JP v. DMAHS, id.* at 713-714, 310-311; S.M.M. §3259.7B1. (Note: the court in its opinion cited §3529.7B1, erroneously transposing the 5 and the 2).
14. *See generally* SMM §3259.7(B)(1).
15. *J.P. v. DMAHS, id.* at 712, 316
16. *Wong v. Doar*, 571 F.3d 247 (2d Cir. 2009).
17. *J.P. v. DMAHS, id.* at 714, 311; The SMM provides “instructions, regulatory citations and information for implementing provisions of Title XIX of the Social Security Act (SSA). Instructions are official interpretations of the law and regulations, and, as such, are binding on Medicaid State agencies.” The SMM is granted deference by both the New Jersey State and federal courts. *JP v. DMAHS, id.* at 715, 312; *Wong v. Doar, id.* at 259;

18. ██████████, p. 6; *See also*, N.J. Department of Human Services (“DHS”), Division of Medical Assistance and Health Services (“DMAHS”), MEDICAID COMMUNICATION NO. 14-15 (December 19, 2014) (Qualified Income Trusts (QIT)).

19. 2003 WL 23118834 (N.J. Adm.).

20. *Supra.*, n. 17.

21. Friedman p. 13.

22. *Garcia v. Kozlov, Seaton, Romanini & Brooks, P.C.*, 845 A. 2d 602, 179 N.J. 343 (2004)

## Witness Qualifications

The undersigned received his Juris Doctor from Temple University School of Law in June, 1981 and is an attorney admitted to the Bar of the Supreme Court of Pennsylvania, the Supreme Court of the United States and the United States Court of Appeals for the Third and Eighth Circuits. I am licensed to practice law before Bar of these state and federal courts. After graduating from law school in 1981, I became the Executive Director of the Philadelphia Bar Association's Senior Citizen Judicare Project (now the SeniorLAW Center), a state and federally funded legal service program representing low income individuals 60 years of age and older in Philadelphia.

I left the Judicare Project in 1984 to enter the private practice of law concentrating in Estate Planning, Health Law and what has more recently become known as Elder Law, eventually founding the firm of Feldman and Feldman in 1988, where I currently continue to concentrate in these areas of law since 1984.

Since entering private practice, I have written and lectured on estate planning for the elderly and the disabled and financing long-term care in Pennsylvania and throughout the United States, before state and national bar associations, including among others the American Health Care Association, the National Academy of Elder Law Attorneys, the New Jersey Institute for Continuing Legal Education and the Pennsylvania Bar Institute, for which I have lectured on a variety of topics concerning Medicaid, disability planning and long-term care, including since 1993, a regularly scheduled three hour lecture entitled "Feldman on Long-Term Care: Financing and Other Patient Issues." I was an Adjunct Professor of Law at Temple University Beasley School of Law where have lectured on the "Non-Tax Issues in Estate Planning" from January, 2009 through December 2015.

I am a co-draftor of Pennsylvania's Older Adults Protective Service Act, 35 P.S. §§10211 et seq. and have been retained by the Pennsylvania Department of Aging to lecture to Area Agencies on Aging throughout Pennsylvania about elder abuse and the legal remedies in protective services.

I have also been involved as lead counsel in significant litigation in federal court involving Medicaid and the Americans with Disabilities Act and the Rehabilitation Act of 1993, including *Wagner v. Fair Acres*, 49 F.3d 1002 (3d Cir. 1995) and *Lewis v. Alexander*, 276 F.R.D. 421 (E.D. Pa. 2011) *aff'd in part and rev'd in part* 685 F.3d 325 (3d Cir. 2012), *cert. denied* 133 S. Ct. 933 (2013). Most recently I was appointed by the Attorney General of North Dakota as a Special Assistant Attorney General to represent the North Dakota Department of Health and Human Services' interests *Geston v. Anderson*, 729 F.3d M1077 ce Cir. 2013).

STEPHEN A. FELDMAN  
Attorney at Law

- 5/12-10/13 STATE OF NORTH DAKOTA, Special Assistant Attorney General
- 12/83-Present FELDMAN & FELDMAN - limited to Estate, Probate & Trust Practice, Health Law and Elder Law.
- 1/09-9/15 TEMPLE UNIVERSITY, Beasley School of Law, Graduate Tax Program, Adjunct Professor, Estate Planning I (1/01); Non-Tax Motivated Estate Planning
- 7/81-12/83 SENIOR CITIZEN JUDICARE PROJECT (now The SeniorLAW Center), Philadelphia, Pennsylvania, Executive Director
- 7/78-6/81 SENIOR CITIZEN JUDICARE PROJECT, Philadelphia, Pennsylvania, Legal Assistant/Law Clerk
- 5/73-11/77 PHILADELPHIA GERIATRIC CENTER, Behavioral Research Department, Philadelphia, Pennsylvania, Research Assistant.

SIGNIFICANT LITIGATION

*Geston v. Anderson*, 729 F.3d 1077 (8<sup>th</sup> Cir. 2013), Lead counsel representing the North Dakota Department of Human Services in an appeal before the United State Court of Appeals for the Eighth Circuit challenging the constitutionality of a state Medicaid statute used in determining income eligibility for community spouses who have purchased annuities.

*Lewis v. Alexander, et al.*, 276 F.R.D. 421 (E.D. Pa 2011), *aff'd. in part and rev'd. in part* 685 F. 3d 325 (3d Cir. 2012), *cert. denied* 133 S. Ct. 933 (2013) (Merits); *Lewis v. Richman, et al.*, 501 F. Supp. 2d 671 (E.D. Pa. 2007) (Motion to Dismiss). Court-appointed lead class counsel in case of first impression and certified as a class action challenging the constitutionality of Pennsylvania's special needs trust law, §1414 of Act 42, published in Purdon's at 62 P.S. §1414. Action was based upon alternative theories of preemption by federal law pursuant the Supremacy Clause of the U.S. Constitution and as violative of the rights of disabled individuals to Medical Assistance under federal law pursuant to 42 U.S.C. §1983. Motion for Summary Judgment granted and upheld on appeal awarding plaintiffs declaratory and injunctive relief invalidating substantial parts of the state statute.

*Wagner v. Fair Acres*, 49 F.3d 1002 (3rd Cir. 1995). Case of first impression filed in 1994 under §504 of the Rehabilitation Act of 1973, 29 U.S.C. §704 and the Americans with Disabilities Act of 1990, 42 U.S.C. §§12101 *et seq.*. Action sought declaratory and injunctive

relief from discrimination against an Alzheimer's Disease patient by a county nursing home for its refusal to admit the patient because of the difficult behaviors associated with the disease. The Third Circuit recognized the right of disabled persons, seeking admission to federally-funded nursing homes *because* of their disability, to file suit for discrimination on the basis of their handicap. The Court also recognized a duty imposed upon nursing facilities to make reasonable accommodations for difficult patients requiring nursing care.

*Cleary v. Waldman*, 959 F. Supp. 222 (D.N.J. 1997), *aff'd*. 167 F. 3d 801 (3d. Cir. 1999), *cert. denied* 528 U.S. 870 (1999). Action challenged the adequacy and application of New Jersey's implementation of the Spousal Impoverishment provisions of the Medical Assistance Act, 42 U.S.C. §1396r-5. The district court's denial of injunctive relief was affirmed by the Court of Appeals and certiorari to the U.S. Supreme Court was denied. The identical issue was decided by The U.S. Supreme Court on appeal from the state Supreme Court of Wisconsin three years later in *Wisconsin Dept. Of Health and Family Services v. Blumer*, 534 U.S. 473 (2002).

*Hurly v. Houstoun, et al.*, Civ. Action No. 93-3666 (E.D. Pa.). Case of first impression when filed in 1993 on behalf of a class consisting of all nursing home residents with spouses living in the community. Action challenged the adequacy and application of Pennsylvania's implementation of the Spousal Impoverishment provisions of the Medical Assistance Act, 42 U.S.C. §1396r-5. Court-approved settlement provided class members with the right to request corrective payments from the Department of Public Welfare and resulted in revised procedures to be implemented prospectively.

*Chalfin v. Beverly Enterprises*, 745 F.Supp 1117 (E.D. PA 1990) Case of first impression filed in 1988 under alternative theories of tort, breach of contract and consumer protection violations under Pennsylvania law for discharging a nursing facility resident after applying for Medical Assistance. Established the right of nursing facility residents in Pennsylvania to file suit for violations of nursing home residents' rights guaranteed under the Medical Assistance Act, 42 U.S.C. §1396 *et seq.* pursuant to the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-1 *et seq.* Case settled for \$75,000.00.

*Buck v. Com., Dept. of Public Welfare*, 566 A.2d 1269 (Cmwlth. Ct. 1989) Case of first impression in Pennsylvania unsuccessfully seeking to establish a spouse's property interest in her institutionalized husband's pension for purposes of determining eligibility for medical assistance. Subsequent legislation passed by Congress protected spouses' interests in the institutionalized spouse's income and resources.

## LEGISLATIVE ADVOCACY

Co-Drafter of the Older Adult Protective Services Act, 35 P.S. §§10211 *et seq.*

Legislative advocacy to reform Pennsylvania's guardianship laws resulting in P.L. 108, No. 24, April 16, 1992 amending the guardianship laws.

PAPERS AND PUBLICATIONS (Partial Listing)

**When Is An Asset Not A Resource? Third Circuit Loses Its Way In The Serbonian Bog Of Medicaid Law**, The Legal Intelligencer, Volume 239, No. 4, January 7, 2009.

**Medical Assistance Law: Planning for the Elderly & Disabled**, Professional Education Systems, Inc. (1992).

**Protective Service Manual**, S. Feldman, ed., Philadelphia Corporation for Aging (1986)

**Black and Spanish Elderly: Their Housing Characteristics and Quality**, S. Hoover and S. Feldman, presented at the National Gerontological Society Meeting, San Francisco, Nov. 1977.

**Crime and the Elderly: Research in Public Housing**, S. Feldman, M.P. Lawton (1976)

**Crime and the Elderly**, eds. J.Goldsmith and S. Goldsmith  
Psychological Aspects of Crime and Fear of Crime, M.P. Lawton, L. Nahemow, S. Yaffe & S. Feldman, D.C. Heath and Co.,(1975)

LECTURES (Partial Listing)

Long Term Care: Financing and Other Patient Issues; Course Planner and sole Lecturer, Pennsylvania Bar Institute (1993, 1996, 1998, 2000, 2004, 2006, 2008, 2009, 2012)

Special Needs Trusts: When Worlds Collide, Course Planner and Faculty Lecturer, Probate and Estate Section Midyear Meeting, Pennsylvania Bar Institute (2008)

Elder law and the Ethics of Medicaid Planning, Course Planner and Faculty Lecturer, Elder Law Institute, Pennsylvania Bar Institute (2008)

Introduction to Litigation in Federal Court, Course Planner and Faculty Lecturer, Elder Law Institute, Pennsylvania Bar Institute, (2008)

Medicaid Planning in the Post Deficit Reduction Act Era, Course Planner and Faculty Lecturer, Elder Law Institute, Pennsylvania Bar Institute (2007)

Planning for Disability; Course Planner and Faculty Lecturer, Pennsylvania Bar Institute, (1991)

Legal Remedies in Protective Services; Pennsylvania Department Aging (1990-1992)

Elderly Abuse in Institutions; Pennsylvania Department of Aging (1990)

Representing the Elderly and their Families; Faculty Lecturer, Dickenson Law Forum (October, 1986).

Estate Planning for Financial Management and Health Care Financing for the Elderly; Course Planner and Faculty member, Pennsylvania Bar Institute (1985), Faculty member (1988, 1990).

Protective Services and the Role of the Social Worker; Philadelphia Department of Public Welfare (1983)

Estate Planning for Families with Elderly; **You and your Aging Parent Conference**, University of Pennsylvania, (1982)

Protective Services, Guardianship and the Mental Health Procedures Act; Philadelphia Corporation for Aging (1982)

Guardianship and Protective Services; Wilkes Barre Dept. of Aging (1981)

#### COMMUNITY & ORGANIZATIONAL ASSOCIATIONS

Alzheimer's Association Delaware Valley Chapter, Board of Directors, Vice Chair (2002-2006) Board Member (2007- present)

Alzheimer's Association of Southeast Pennsylvania, Board of Directors, President (1985-1987, 2000-2002), Treasurer (1990) Vice Chair (1998-2000)

Alzheimer's Disease Education and Referral (ADEAR) Center, National Institute on Aging, Silver Spring, MD; Appointed member to the Expert Advisory Panel (1991-1993)

Community Legal Services, Inc.; Philadelphia, PA, Board of Directors, Treasurer, (1984-1997)

CARIE - Coalition of Advocates for the Rights of the Infirm Elderly Philadelphia, PA Board of Directors (1984 - 1992)

National Alzheimer's Disease and Related Disorders Association, Pennsylvania State Coordinator (1986)

Philadelphia Corporation for Aging, Long Term Care Advisory Board (1987-1988)

Philadelphia Geriatric Center, Philadelphia, PA, Research Committee, Board of Directors (1990-1999)

Philadelphia Task Force on Elder Abuse; Philadelphia, PA, Chair (1984-1985)

Senior Citizen Judicare Project, now SeniorLAW Center; Philadelphia, PA, Board of Directors, (1984 - 2011) Chair (1994-1998)

## AWARDS

Award of Excellence for Professional Services, presented by Achieva (formerly ARC of Allegheny County) December 2, 2013 in recognition of outstanding professional services for his representation all persons with disabilities in Pennsylvania in *Lewis v. Alexander*.

Equal Justice Award, presented by Community Legal Services April 19, 1996, in recognition of outstanding dedication and commitment to Community Legal Services.

Business Service Award, presented by the Emergency Fund Coalition for Older Philadelphians, September 25, 1996 for exceptional services on behalf of older Philadelphians.

Benefactor of the Year Award, presented by the Senior Citizen Judicare Project, October 22, 1999, for outstanding generosity in support of their work in protecting the rights and interests of older Philadelphians in need.

## ASSOCIATIONS

### Pennsylvania Supreme Court Disciplinary Board

Hearing Committee Member (7/1/03 - 6/30/09); Senior Member (7/1/05 - 6/30/09)

### Philadelphia Bar Association

Chair, Committee on Aging of the Family Law Section (1985-1987); Member, Probate and Estates Section, Committee on Health Law; SeniorLAW Center and VIP - Volunteer Attorney

### Pennsylvania Bar Association

Probate Section  
Elder Law Section

### American Bar Association

Member, Real Property and Probate Section; Health Law Section; Member, Society of Law and Medicine

## EDUCATION

B.A., Psychology, Temple University (1974)

J.D. Temple University School of Law (1981)

Admitted to the Bars of the Pennsylvania Supreme Court, U.S. Court of Appeals for The Third and Eighth Circuits and the United States Supreme Court.