

Court Says Guardian Not Obligated To Nursing Home To Spend-Down Resident's Assets, Apply For Assistance.

A resident was admitted to a nursing home with assets of \$160,000, mostly stocks. Her court-appointed guardian took his time liquidating her assets to get below the limit for government assistance, and at least twice was turned down simply for failing to document the resident's application properly.

When the resident died the delay left \$63,000 owing to the nursing home, for which it sued the guardian for negligence.

The guardian of a nursing home resident's assets has the duty to use the assets for the resident's benefit. That includes properly putting them in trust or spend-ing-down the assets so the resident can qualify for gov-ernment assistance if such assistance is necessary to prevent the resident from being discharged from the nursing home.

However, the guardian's duty is a duty owed only to the resident and it is not owed to the nursing home.

APPELLATE COURT OF CONNECTICUT,
2000.

The Appellate Court of Connecticut ruled a nursing home has no right to sue for this. The guardian caused no jeopardy to the resident. Jewish Home for Elderly v. Cantore, 752 A. 2d 1117 (Conn. App., 2000).

Emergency Medical Treatment And Active Labor Act (EMTALA): Patient's Lawsuit Upheld.

Congress enacted EMTALA in response to growing concern hospitals were "dumping" patients, by refusing to provide emergency medical services to persons who were uninsured or unable to pay, or by transferring persons from private hospitals to public hospitals before their emergency medical conditions had stabilized.

That being the purpose, however, EMTALA is not limited only to indigents and the uninsured. It applies to any individual who presents in a hospital's emergency department.

Congress expressly defined what is required of hospitals. Any person who comes into an emergency department with a medical emergency and requests treatment is entitled to an appropriate medical screening examination and to further examination and treatment necessary to stabilize the emergency, before discharge or transfer.

A person can be transferred before being stabilized, but that requires strict adherence to Federal regulations that define an appropriate transfer.

SUPREME COURT OF LOUISIANA, 2000.

A patient was brought in to the emergency room by her husband with complaints of vomiting, upper back pain, fever and diarrhea. She was examined by a physician, two nurses and a respiratory therapist. Based on the results of lab tests and chest x-rays the emergency room physician diagnosed right upper lobe pneumonia, rule out right upper lobe lung cancer.

After discussing the diagnosis with the couple, the physician arranged for her transfer to a public hospital. The husband would later claim they did not want to treat her because she had no insurance. The physician would later claim it was because the other hospital had a specialized intensive care unit that could give her better care.

The patient suffered cardiac arrest at the public hospital and died the next morning. The autopsy fixed the cause of death as pseudomonas pneumonia.

The husband sued both hospitals. His suit against the first hospital alleged a violation of the Emergency Medical Treatment and Active Labor Act (EMTALA).

The Supreme Court of Louisiana at this stage ruled only that the first hospital's preliminary petition to throw out the suit for lack of legal foundation should not be granted. The court said if the husband's allegations were true a jury could decide the case in favor of the husband.

There also were allegations of medical malpractice separate from the allegation of an EMTALA violation. The malpractice issues would have to go before a medical review panel before the suit could be tried before a civil jury, and the medical review panel could rule out the medical malpractice aspects of the lawsuit altogether.

However, the allegation of an EMTALA violation could not be passed upon by a medical review panel. As a creation of state law a medical review panel has no jurisdiction over the Federal rights given to patients and families by the EMTALA. Spradlin v. Acadia-St. Landry Medical Foundation, 758 So. 2d 116 (La., 2000).