

FACT PATTERN FINAL
PLANNING FOR THE MEDIUM SIZED ESTATE

MEET JIM AND KAREN WILSON CLARKE

JIM IS 73 (RECENTLY DIAGNOSED WITH PARKINSON'S)

KAREN IS 65

JIM AND KAREN HAVE BEEN MARRIED FOR 40 YEARS

SECOND MARRIAGE FOR BOTH-NO PRENUPTIAL AGREEMENT

THEY LIVE IN WORCESTER

THEY HAVE A CONDO IN FLORIDA

THEY HAVE THREE ADULT CHILDEN AND JIM HAS AN AGING PARENT

2 FAMILY RENTAL OWNED FOR 30 YEARS

KAREN'S INCOME - \$2,000/MO PENSION, PAYS \$400/ MO MEDICAL INS

JIM'S INCOME = SOCIAL SECURITY \$1,800 NET, PAYS \$250/MO MEDEX

RENTAL INCOME – NET MONTHLY INCOME \$1,700

ESTATE ASSETS

PRIMARY RESIDENCE	\$ 750,000.00
2 FAMILY RENTAL PROPERTY	\$ 500,000.00 (fully depr. Cost \$175,000)
CONDOMINIUM	\$ 250,000.00 (Cost \$350,000)
STOCK PORTFOLIO	\$ 175,000.00
BANK ACCOUNTS	\$ 100,000.00
IRA (KAREN)	\$ 75,000.00
IRA (JIM)	\$ 75,000.00
LIFE INSURANCE (Karen)	\$ 5,000.00 CSV
LIFE INSURANCE (Jim)	\$ 6,000.00 CSV
TOTAL ASSETS	\$ 1,986,000.00

THE CHILDREN

SAMANTHA CLARKE-FISHER

LIVES IN NEWTON, MA

45 YEARS OLD (CHILD OF JIM'S FIRST MARRIAGE)

MARRIED TO JONATHAN FISHER

ONE CHILD-JOHN, JR. 17 YEARS OLD-DIAGNOSED WITH AUTISM

ANTHONY CLARKE

LIVES IN SHREWSBURY, MA

34 YEARS OLD

UNMARRIED IN A RELATIONSHIP WITH MICHAEL TURNER FOR
THREE YEARS

GRADUATED CULINARY INSTITUTE OF AMERICA

EARNS \$50,000.00 PER YEAR.

RICHARD BARNETT

LIVES WITH THE CLARKES

43 YEARS OLD (CHILD OF KAREN'S FIRST MARRIAGE)

HAS CEREBRAL PALSY AND LIVES WITH, AND IS COMPLETELY
DEPENDENT UPON HIS MOTHER AND JIM

RECEIVES SSI AND MASS HEALTH SERVICE

AGING PARENT

JASON CLARKE

93 YEARS OLD

RETIRED MASS CIVIL SERVICE EMPLOYEE

RETIREMENT PENSION \$1,500.00 PER MONTH

SOCIAL SECURITY \$ 700.00 PER MONTH

SAVINGS ACCOUNTS \$150,000.00

SUFFERING FROM PARKINSON'S DISEASE AND SHOWING SIGNS OF
DEMENTIA



Fact Sheet

SOCIAL SECURITY

2020 SOCIAL SECURITY CHANGES

Cost-of-Living Adjustment (COLA):

Based on the increase in the Consumer Price Index (CPI-W) from the third quarter of 2018 through the third quarter of 2019, Social Security and Supplemental Security Income (SSI) beneficiaries will receive a 1.6 percent COLA for 2020. Other important 2020 Social Security information is as follows:

Tax Rate	2019	2020
Employee	7.65%	7.65%
Self-Employed	15.30%	15.30%

NOTE: The 7.65% tax rate is the combined rate for Social Security and Medicare. The Social Security portion (OASDI) is 6.20% on earnings up to the applicable taxable maximum amount (see below). The Medicare portion (HI) is 1.45% on all earnings. Also, as of January 2013, individuals with earned income of more than \$200,000 (\$250,000 for married couples filing jointly) pay an additional 0.9 percent in Medicare taxes. The tax rates shown above do not include the 0.9 percent.

	2019	2020
Maximum Taxable Earnings		
Social Security (OASDI only)	\$132,900	\$137,700
Medicare (HI only)	No Limit	
Quarter of Coverage		
	\$1,360	\$1,410
Retirement Earnings Test Exempt Amounts		
Under full retirement age	\$17,640/yr. (\$1,470/mo.)	\$18,240/yr. (\$1,520/mo.)
NOTE: One dollar in benefits will be withheld for every \$2 in earnings above the limit.		

The year an individual reaches full retirement age	\$46,920/yr. (\$3,910/mo.)	\$48,600/yr. (\$4,050/mo.)
NOTE: Applies only to earnings for months prior to attaining full retirement age. One dollar in benefits will be withheld for every \$3 in earnings above the limit.		
Beginning the month an individual attains full retirement age	None	

	2019	2020
Social Security Disability Thresholds		
Substantial Gainful Activity (SGA)		
Non-Blind	\$1,220/mo.	\$1,260/mo.
Blind	\$2,040/mo.	\$2,110/mo.
Trial Work Period (TWP)	\$ 880/mo.	\$ 910/mo.
Maximum Social Security Benefit: Worker Retiring at Full Retirement Age		
	\$2,861/mo.	\$3,011/mo.
SSI Federal Payment Standard		
Individual	\$ 771/mo.	\$ 783/mo.
Couple	\$1,157/mo.	\$1,175/mo.
SSI Resource Limits		
Individual	\$2,000	\$2,000
Couple	\$3,000	\$3,000
SSI Student Exclusion		
Monthly limit	\$1,870	\$1,900
Annual limit	\$7,550	\$7,670
Estimated Average Monthly Social Security Benefits Payable in January 2020		
	Before 1.6% COLA	After 1.6% COLA
All Retired Workers	\$1,479	\$1,503
Aged Couple, Both Receiving Benefits	\$2,491	\$2,531
Widowed Mother and Two Children	\$2,888	\$2,934
Aged Widow(er) Alone	\$1,400	\$1,422
Disabled Worker, Spouse and One or More Children	\$2,141	\$2,176
All Disabled Workers	\$1,238	\$1,258

This press release was produced and disseminated at U.S. taxpayer expense.

130 CMR: DIVISION OF MEDICAL ASSISTANCE

520.018: Transfer of Resources Regardless of Date of Transfer

- (A) The provisions of 42 U.S.C. 1396p apply to all transfers of resources. In the event that any portion of 130 CMR 520.018 and 520.019 conflicts with federal law, the federal law supersedes.
- (B) The MassHealth agency denies payment for nursing-facility services to an otherwise eligible nursing-facility resident as defined in 130 CMR 515.001: *Definition of Terms* who transfers or whose spouse transfers countable resources for less than fair-market value during or after the period of time referred to as the look-back period.
- (C) The denial of payment for nursing-facility services does not affect the individual's eligibility for other MassHealth benefits.
- (D) Circumstances giving rise to disqualifying transfers of resources are also described at 130 CMR 520.007(J).

520.019: Transfer of Resources Occurring on or after August 11, 1993

- (A) Payment of Nursing-facility Services. The MassHealth agency applies the provisions of 130 CMR 520.018 and 520.019 to nursing-facility residents as defined at 130 CMR 515.001: *Definition of Terms* requesting MassHealth agency payment for nursing-facility services provided in a nursing facility or in any institution for a level of care equivalent to that received in a nursing facility or for home- and community-based services provided in accordance with 130 CMR 519.007(B): *Home- and Community-based Services Waiver Frail Elder*.
- (B) Look-back Period. Transfers of resources are subject to a look-back period, beginning on the first date the individual is both a nursing-facility resident and has applied for or is receiving MassHealth Standard.
 - (1) For transfers occurring before February 8, 2006, this period generally extends back in time for 36 months.
 - (2) For transfers of resources occurring on or after February 8, 2006, the period generally extends back in time for 60 months. The 60-month look-back period will begin to be phased in on February 8, 2009. Beginning on March 8, 2009, applicants will be asked to provide verifications of their assets for the 37 months prior to the application. As each month passes, the look-back period will increase by one month until the full 60 months is reached on February 8, 2011.
 - (3) For transfers of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).
- (C) Disqualifying Transfer of Resources. The MassHealth agency considers any transfer during the appropriate look-back period by the nursing-facility resident or spouse of a resource, or interest in a resource, owned by or available to the nursing-facility resident or the spouse (including the home or former home of the nursing-facility resident or the spouse) for less than fair-market value a disqualifying transfer unless listed as permissible in 130 CMR 520.019(D), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019(J). The MassHealth agency may consider as a disqualifying transfer any action taken to avoid receiving a resource to which the nursing-facility resident or spouse is or would be entitled if such action had not been taken. Action taken to avoid receiving a resource may include, but is not limited to, waiving the right to receive a resource, not accepting a resource, agreeing to the diversion of a resource, or failure to take legal action to obtain a resource. In determining whether or not failure to take legal action to receive a resource is reasonably considered a transfer by the individual, the MassHealth agency considers the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available.
- (D) Permissible Transfers. The MassHealth agency considers the following transfers permissible. Transfers of resources made for the sole benefit of a particular person must be in accordance with federal law.

130 CMR: DIVISION OF MEDICAL ASSISTANCE

520.019: continued

- (1) The resources were transferred to the spouse of the nursing-facility resident or to another for the sole benefit of the spouse. A nursing-facility resident who has been determined eligible for MassHealth agency payment of nursing-facility services and who has received an asset assessment from the MassHealth agency must make any necessary transfers within 90 days after the date of the notice of approval for MassHealth in accordance with 130 CMR 520.016(B)(3).
- (2) The resources were transferred from the spouse of the nursing-facility resident to another for the sole benefit of the spouse.
- (3) The resources were transferred to the nursing-facility resident's permanently and totally disabled or blind child or to a trust, a pooled trust, or a special-needs trust created for the sole benefit of such child.
- (4) The resources were transferred to a trust, a special-needs trust, or a pooled trust created for the sole benefit of a permanently and totally disabled person who was younger than 65 years old at the time the trust was created or funded.
- (5) The resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident.
- (6) The nursing-facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons:
 - (a) the spouse;
 - (b) the nursing-facility resident's child who is younger than 21 years old, or who is blind or permanently and totally disabled;
 - (c) the nursing-facility resident's sibling who has a legal interest in the nursing-facility resident's home and was living in the nursing-facility resident's home for at least one year immediately before the date of the nursing-facility resident's admission to the nursing facility; or
 - (d) the nursing-facility resident's child (other than the child described in 130 CMR 520.019(D)(6)(b)) who was living in the nursing-facility resident's home for at least two years immediately before the date of the nursing-facility resident's admission to the institution, and who, as determined by the MassHealth agency, provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility.
- (7) The resources were transferred to a separately identifiable burial account, burial arrangement, or a similar device for the nursing-facility resident or the spouse in accordance with 130 CMR 520.008(F).

(E) Repayment of Financial and Medical Assistance. A nursing-facility resident who has received or will be receiving payment from a third party as a result of an accident, injury, or other loss must first repay the MassHealth agency for medical assistance under M.G.L. c. 118E, § 22 and 42 U.S.C. 1396a(a)(25)(A) and (B) and the Department of Transitional Assistance for financial assistance under M.G.L. c. 18, § 5G, before the MassHealth agency will consider whether a transfer of such third-party payments may be permissible under 130 CMR 520.019(D), (F), or (J).

(F) Determination of Intent. In addition to the permissible transfers described in 130 CMR 520.019(D), the MassHealth agency will not impose a period of ineligibility for transferring resources at less than fair-market value if the nursing-facility resident or the spouse demonstrates to the MassHealth agency's satisfaction that

- (1) the resources were transferred exclusively for a purpose other than to qualify for MassHealth; or
- (2) the nursing-facility resident or spouse intended to dispose of the resource at either fair-market value or for other valuable consideration. Valuable consideration is a tangible benefit equal to at least the fair-market value of the transferred resource.

SENATE No. 1631

The Commonwealth of Massachusetts

PRESENTED BY:

Julian Cyr

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to mitigate snowbird relocation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Julian Cyr</i>	<i>Cape and Islands</i>	
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/21/2019</i>

SENATE No. 1631

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 1631) of Julian Cyr and Denise Provost for legislation to mitigate snowbird relocation. Revenue.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act to mitigate snowbird relocation.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 3 of chapter 65C of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting, after the word “ninety-six;”, in line 14, the
3 following words:- “two million dollars or less for decedents dying after December thirty-first,
4 two thousand and twenty;” .

5 SECTION 2. Notwithstanding any general or special law to the contrary, the department
6 of revenue shall develop an updated rate table for calculation of the estate tax under section 2 of
7 chapter 65C. The rates in the updated table shall take into account the exemption allowed under
8 section 3 of said chapter, as most recently amended by this act, and shall make a report to the
9 house and the senate committees on ways and means, no later than May 1, 2020, with
10 recommendations on implementation of: (1) an updated rate table for calculation of the estate
11 tax; and (2) regular increases in the amount of the exemption under section 3 of chapter 65C;
12 provided, however, that the recommended rates must be calculated such that the implementation
13 is revenue neutral.

Analysis of Special Needs Planning Opportunities

SPOUSAL TESTAMENTARY SUPPLEMENTAL NEEDS TRUSTS

JIM has been diagnosed with Parkinson's at age 73 which makes his incapacity highly likely. Planning should take into consideration that assets passing to him outright or held in for his benefit under a trust created by KAREN and funded during her lifetime will be considered countable resources. Supplemental Needs trust planning for his benefit should be put in place. KAREN does not have disabling illness and is much younger nonetheless standby supplemental needs trust provisions should be put in place for her as well.

Under Medicaid and MassHealth regulations 42 U.S.C. 1396p(d)(2)(A) and 130 CMR 520.022(B)(1) assets left to a surviving spouse in a trust established (and funded) under a Will are treated as an exception to the trust rules affecting countability of trust assets. A testamentary Supplemental needs trust can be utilized to hold assets for the surviving spouse. The supplemental needs trust provisions can be mandatory or standby. This safe harbor can be created as an alternative provision under an Estate Plan utilizing Pour Over wills and Revocable trusts. The assets held in a funded revocable trust can be sent back to the deceased spouse's probate estate to fund the Testamentary Supplemental Needs trust established under the terms of the Will.

SAMPLE PROVISION from Wealth Counsel drafting program.

Section 1.01 Distribution to My Will

This Section applies if my husband survives me and is a disabled person (as defined in United States Code Title 42, Section 1382c(a)(3), or under Massachusetts law related to means-based government programs), or is eligible to receive or is receiving assistance (as defined in United States Code Title 42, Section 1396d(a), or under Massachusetts law related to means-based government programs) or other benefits under a means-based government program, such as Medicaid or Supplemental Security Income.

If my husband meets the criteria set forth above, my Trustee shall distribute the remaining trust property to the Personal Representative of my estate for administration and distribution under the terms of my Will.

But if my husband does not meet the criteria set forth above, my Trustee shall administer the remaining trust property as otherwise provided in this Article.

The Will must also include trust provisions to hold the assets and can include marital and credit shelter trust planning to minimize estate taxes.

PARENTAL PROTECTION TRUST

JIM and KAREN may wish to benefit his father should they predecease him. Again leaving assets outright to the father places those assets at risk for payment of Nursing Home expenses that may otherwise be paid by MassHealth. Funding a Pooled Trust is too risky given pending regulations affecting funds for persons over 65. JIM and KAREN could fund a trust only in the event they are both deceased. The following trust provisions can be added to a revocable trust plan or a separate trust. This is similar to a Third Party Supplemental Needs Trust.

SAMPLE PROVISIONS from Elder Counsel drafting program.

Section 1.02 Distributions of Income and Principal

The Trustee will collect income and, after deducting all charges and expenses attributed thereto, may apply for Name of Parent's benefit, in-kind, or in cash, so much of the income and principal (even to the extent of the whole) as the Trustee deems advisable in the Trustee's sole and absolute discretion, **subject to the limitations set forth below**. The Trustee must add the balance of net income not paid or applied to the principal of the Trust.

(a) Maximize Benefits

Consistent with the Trust's purpose, before expending any amounts from the net income and/or principal of this Trust, the Trustee must consider the availability of all benefits from government or private assistance programs for which Name of Parent may be eligible. The Trustee, where appropriate and to the extent possible, must endeavor to maximize the collection and facilitate the distribution of these benefits for Name of Parent's benefit.

(b) No Reduction in Benefits

None of the income or principal of this Trust may be applied in such a manner as to supplant, impair, or diminish any governmental benefits or assistance for which Name of Parent may be eligible or which Name of Parent may be receiving, unless, in the sole and absolute discretion of the Trustee, such use of income and/or principal is beneficial to Name of Parent.

(c) No Assignment

Under no circumstances may Name of Parent have the power to assign, encumber, direct, distribute, or authorize distributions from this Trust.

(d) Discretionary Distributions

Notwithstanding the above provisions, the Trustee may make distributions to meet Name of Parent's need for food, shelter, health care, or other personal needs, even if those distributions will impair or diminish Name of Parent's receipt or eligibility for government benefits or assistance only if the Trustee determines that the distributions will better meet Name of Parent's needs, and it is in Name of Parent's best interests, notwithstanding the consequent effect on Name of Parent's eligibility for, or receipt of, benefits.

(e) Distributions for Name of Parent's Benefit

When making distributions for Name of Parent's benefit, the Trustee is not required to take into consideration the interests of the remainder beneficiaries. In the Trustee's sole and absolute discretion, the entire Trust corpus may be consumed for Name of Parent's benefit to the exclusion of the remainder beneficiaries.

(f) Supplemental Needs Trust Savings Clause

In the event that the mere existence of the authority to make distributions that will impair or diminish Name of Parent's receipt or eligibility for government benefits or assistance, as specified in subsections (b) and (d), above, will result in a reduction or loss of Name of Parent's entitlement program benefits, regardless of whether the Trustee actually exercises the authority, then such authority specified in subsections (b) and (d), above, will be null and void, and the Trustee's authority to make these distributions will terminate and the Trustee's authority to make distributions will be limited to purchasing goods and services for Name of Parent's supplemental needs in a manner that will not adversely affect his government benefits.

Notwithstanding the provisions of any Article herein to the contrary, in the event that this Trust is challenged or faces imminent invasion by any governmental department or agency in such a way as to affect Name of Parent's eligibility for benefits available under any governmental program, the Trustee is empowered to amend this Trust so as to maintain Name of Parent's eligibility for benefits under such governmental program.

Section 1.03 No Seeking of Order to Distribute

Under no circumstances may Trust principal be subject to any court-directed invasion pursuant to the laws of the Commonwealth of Massachusetts or any other state.

For purposes of determining Name of Parent's Medicaid eligibility, or eligibility for any other service provided under Massachusetts's Medicaid program, no part of the principal or undistributed income of the Trust Estate will be considered available to him.

The Trustee may, in the Trustee's sole and absolute discretion, take necessary administrative or legal steps to protect Name of Parent's Medicaid eligibility, or eligibility for any other service provided under Massachusetts's Medicaid program, including obtaining a ruling from a court of competent jurisdiction that the Trust principal is not available to Name of Parent for purposes of determining such eligibility. Expenses for this purpose, including reasonable attorney fees, will be a proper charge to the Trust Estate.

Section 1.04 Commingling of Property Prohibited

Under no circumstances may Name of Parent have any ownership interest whatsoever in the assets of this Trust. Therefore, the Trustee may not permit Name of Parent to commingle his funds not belonging to the Trust with Trust property. Specifically, the Trustee may not accept or commingle any earnings or public benefits payable to Name of Parent. Under no circumstances may a representative payee for Name of Parent's Supplemental Security Income, or other benefits administered by the Social Security Administration cause those funds to be commingled with this Trust agreement.

The Trustee must not accept any property assigned, conveyed, or delivered to the Trustee if Name of Parent has gained any vested ownership interest in it. This includes, but is not limited to:

- (i) any of Name of Parent's social security benefits;
- (ii) inheritances in which Name of Parent has gained an ownership interest;
- (iii) property directed to this Trust instrument as the result of a disclaimer exercised by Name of Parent;
- (iv) proceeds from a blocked account for Name of Parent's benefit; or
- (v) assets from Name of Parent's conservatorship or guardianship account.

In the event that a Trustee is also serving in any other fiduciary capacity on Name of Parent's behalf, those activities will be independent from any actions taken with regard to this Trust agreement.

Section 1.05 Manner of Trust Distributions

Prior to making distributions, Trustmakers encourage, but do not require, the Trustee to seek the advice of an attorney experienced in making distributions for persons with disabilities similar to Name of Parent's.

If Name of Parent is receiving Supplemental Security Income, Medicaid benefits, or benefits through another similar program that has income and/or resource limitations, the Trustee:

- (i) may not distribute cash directly to Name of Parent;
- (ii) may not reimburse Name of Parent directly for purchases he makes;
- (iii) may pay directly for services, provided Name of Parent does not receive any assets as a result of such expenditure that can be converted to cash; and
- (iv) may distribute a gift certificate directly to Name of Parent if the certificate is nontransferable and nonrefundable and cannot be converted to cash.

Section 1.06 Residential Needs

The Trustee should consider distributions for such things as residential expenses beyond basic rent costs, including furnishings, utilities (other than gas, electricity, garbage collection, and water), telephone, internet, and television service.

As long as any home or residence is part of the Trust, the Trustee may pay from the Trust any and all expenses related to the property and must keep the property in good repair. Authorized expenses include, but are not limited to, taxes, assessments, homeowner association charges, utility

charges, fire and other insurance premiums, interest and amortization payments, yard maintenance, and repairs and all costs of maintenance and upkeep of the dwelling (including capital expenditures, such as a new roof, replacement of plumbing, air conditioning and heating systems, and major appliances). The Trustee may require other occupants to contribute to the cost of utilities, groceries, and other such items as the Trustee deems necessary and appropriate under the circumstances.

The Trustee, in the Trustee's sole and absolute discretion, may charge Name of Parent rent or allow him to live free of rent. Under no circumstances may Name of Parent gain a fee interest in the property.

Section 1.07 Professional Services

The Trustee may pay for professional services rendered for Name of Parent's benefit, including, but not limited to, the legal services associated with the preparation, execution, funding, administration, and termination of this Trust, as well as ongoing fiduciary, legal, accounting, bookkeeping, and other services as may be necessary or appropriate for the Trustee in administering this Trust for Name of Parent's benefit.

Section 1.08 Vehicle Purchase

The Trustee, in the Trustee's sole and absolute discretion, may purchase or lease and pay for the maintenance of a motor vehicle that is designed or modified to accommodate the needs of Name of Parent's disability, provided the vehicle will be used primarily on Name of Parent's behalf. The Trustee may permit title and registration to be in the name of the person with responsibility for Name of Parent's care. The Trustee may also pay all or part of the automobile insurance associated with the vehicle. If the Trustee decides to title and register the vehicle in the name of the caregiver, the Trustee must obtain security or other written assurances from that person that the vehicle will not be assigned or otherwise used as collateral for the benefit of another, and that when the vehicle is sold, the proceeds from the sale will be provided to the Trustee. The Trustee has no responsibility to ensure that the vehicle registered in the name of the caregiver is properly and safely maintained.

CERTIFICATION
OF
CHRONICALLY ILL INDIVIDUAL
UNDER
INTERNAL REVENUE CODE SEC. 7702B

The undersigned certifies that he or she is a licensed health care practitioner as defined in IRC Sec 7702B(c)(4) (that is a physician (as defined in Sec 1861(r) of the Social Security Act), a registered professional nurse, or a licensed social worker). The undersigned certifies that _____ is a chronically ill individual because he or she meets one of the following two tests:

Activities of Daily Living Test: He or she is unable to perform at least two of the activities of daily living (ADL's), eating, toileting, transferring, bathing, dressing, and continence, without substantial assistance from another individual and has or will be unable to perform such ADL's without such assistance for a period of at least 90 days due to a loss of functional capacity. I understand that (1) "Substantial assistance" means hands-on assistance and standby assistance; (2) "Hands-on assistance" means the physical assistance of another person without which the individual would be unable to perform the ADL; (3) "Standby assistance" means the presence of another person within arm's reach of the individual that is necessary to prevent, by physical intervention, injury to the individual while the individual is performing the ADL (such as being ready to catch the individual if the individual falls while getting into or out of the bathtub or shower as part of bathing, or being ready to remove food from the individual's throat if the individual chokes while eating.)

Cognitive Impairment Test: He or she requires substantial supervision to protect himself or herself from threats to health and safety due to severe cognitive impairment. I understand that (1) "Severe cognitive impairment" means a loss or deterioration in intellectual capacity that is (a) comparable to (and includes) Alzheimer's disease and similar forms of irreversible dementia, and (b) measured by clinical evidence and standardized tests that reliably measure impairment in the individual's (i) short-term or long-term memory, (ii) orientation as to people, places, or time, and (iii) deductive or abstract reasoning, and that (2) "Substantial supervision" means continual supervision (which may include cueing by verbal prompting, gestures, or other demonstrations) by another person that is necessary to protect the severely cognitively impaired individual from threats to his or her health or safety (such as may result from wandering).

Date

Signature

Title