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CAN A CHILD BE FORCED TO SUPPORT HIS PARENT?



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Can an adult child be held responsible to pay for the long term care costs of his parent in New Jersey? This is a concept called filial responsibility. The short answer is, yes, under certain circumstances, an adult child could be held responsible for the care of his adult parent.

New Jersey does have a filial responsibility statute. New Jersey's statute provides that a child of an individual who is receiving public assistance, such as Medicaid, can be ordered to support his parent if the child has sufficient means. The "order" for support from the child of the parent can be entered by the appropriate county board of social services or any court of competent jurisdiction acting on its own initiative or upon information provided by any individual.

In other words, the board of social services can order the adult child to support his parent or a court can enter such an order if any person with knowledge of the situation informs the court that the adult child has the means to support his parent. A child over the age of fifty-five cannot be forced to support his parent.

A healthy spouse can also be ordered to support his ill spouse who is receiving public assistance. There is no age exception for a spouse, so a spouse of any age, if of sufficient means, could be ordered to support his ill spouse.

Pennsylvania, like New Jersey, has a filial responsibility statute, too. In Pennsylvania, the state has somewhat aggressively sought to enforce its statute. Apparently, the Pennsylvania statute is broader than the New Jersey statute. The Pennsylvania statute does not have as many exceptions to support (such as the exception for a child over the age of fifty-five mentioned above).

A recent court case involving a disabled child residing in Pennsylvania reignited some interest in the filial responsibility statute. In this case, the "child" was thirty-one years of age. He (the child was a son) had been disabled since birth. The son resided in a long-term care facility in Pennsylvania; however, his parents were New Jersey residents.

The Pennsylvania long-term care facility that provided care to the child sought to obtain a support order against the child's parents, who resided in New Jersey. The Pennsylvania filial responsibility statute would permit the long-term care facility to obtain an order of support against the parents. New Jersey's filial responsibility statute would not permit the facility to obtain an order of support against the parents because the parents were over the age of fifty-five.

The case was a "choice of law" case. When you have a case that involves two states, such as New Jersey and Pennsylvania, a question can arise as to which state's law applies. As in this case, one state's law might differ from the other state's law and that difference can have a profound impact on the case.

In this recent case, the court held that since the parents resided in New Jersey and the support order was sought against the parents, New Jersey law applied to the case. Since New Jersey law applied to the case and since the parents were over the age of fifty-five, the parents were sheltered from supporting their adult child.

These parents were protected from having a support order entered against them; however, if the child were under the age of eighteen or if the parents were younger than fifty-five, then New Jersey law would have permitted the long-term care facility to proceed against the parents for a support order.

New Jersey's filial responsibility law is something to bear in mind. An adult child could be held liable to pay for the care of his adult child in New Jersey. Just because it hasn't happened to date, doesn't mean that it cannot happen.

Mr. Callinan is a certified elder law attorney (as certified by the National Elder Law Foundation, accredited by the American Bar Association) with offices located in Middletown. There are over 85,650 licensed attorneys in New Jersey and fewer than 60 are Certified Elder Law Attorneys. Mr. Callinan can be reached at 732-706-8008 or www.eldercarelawyer.com.

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