

LK Alert

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APPELLATE COURT REVERSES INCOME DISREGARD (NAMI DEDUCTION) FOR COMPENSATION TO COURT-APPOINTED GUARDIAN

On September 28, 2010, the Appellate Division, Second Dept, issued a decision in an Article 81 guardianship case, *Matter of Deanna W.*, which effectively reversed that part of an Order and Judgment of the Queens County Supreme Court which directed the Nassau County Department of Social Services (“DSS”) to disregard a certain portion of the monthly income of the incapacitated person (“IP”) in order to provide for guardian compensation. In the underlying case, the Queens County Supreme Court ordered DSS to disregard \$450 per month of the IP’s income when calculating the Net Available Monthly Income (“NAMI”) to be contributed towards the IP’s cost of care. The \$450 income disregard was to be used to compensate the Court-appointed guardian. In reversing the order of the lower court, the Appellate Court noted that New York’s regulations regarding the calculation of an individual’s NAMI contain an extensive list of income and resource “disregards” (18 NYCRR 360-4.6). However, the list does not include any disregarding of an individual’s expenses, even where those expenses are non-discretionary expenses related to the condition contributing to the individual’s need for medical expenses.

It is unclear whether as a result of this decision, other DSS agencies will continue to allow a NAMI deduction for Court-approved guardian compensation. If not, then the guardianship Courts will need to address the difficult issue of finding qualified guardians who are willing to serve without compensation for incapacitated Medicaid recipients. In at least one county (Dutchess), the Commissioner of DSS has accepted the appointment as guardian in such cases. The question is whether other counties would be willing to do so, particularly given the current economic climate and budgetary concerns.

Littman Krooks LLP encourages you to share this LK Alert with anyone interested in the issues discussed herein. Please contact Nicole Garcia at (212) 490-2020 or (914) 684-2100 if you are interested in having an attorney from Littman Krooks LLP speak at your facility. Littman Krooks LLP offers legal services in several areas of law, including Accounts Receivable Management, Medicaid, Health Care, Guardianship, Elder law, Estate and Tax planning, Public Benefits, Estate Administration/Probate, and Trusts and Estates.

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