



Monthly Newsletter

July 2013



DUSTIN C. BEARD, PARTNER
300 East Main St. Ste 150 Lexington, KY 40507
<http://kystateplanningattorney.com/>
dbeard@kylawpractice.com
(859) 904-2045

Volume 4, Issue 4

An Overview of the Defense of Marriage Act Ruling

The U.S. Supreme Court delivered a historic decision in *U.S. v. Windsor*¹ that could have far-reaching effects on seniors, persons with disabilities, and veterans who are married to, or plan to marry, a person of the same gender. This edition of the ElderCounselor™ will provide an overview of the decision and how it may affect Medicaid recipients in a same-sex marriage.

Overview of U.S. v. Windsor:

An historical decision by the U.S. Supreme Court came down on June 26, 2013, declaring unconstitutional a portion of the Federal law commonly known as the Defense of Marriage Act (“DOMA”). In this case, Edith Windsor, the New York resident and Canadian married spouse of Thea Spyer, sought relief from the Court system when she was denied a \$363,053 refund for estate taxes she paid when Spyer died. In denying her request, the IRS relied on Section 3 of DOMA, which defined marriage as a union between a man and a woman. Because Windsor and Spyer were a same-sex couple, albeit validly recognized under the laws of New York, the Federal law disallowed benefits to them which are available to heterosexual married couples. Here, the benefit disallowed came in the form of estate tax relief to a surviving spouse.

¹ *U.S. v. Windsor*, 570 U.S. ____ (2013)

In the written opinion of the Court, Justice Kennedy focused on the long-established right of the states to determine the laws regarding domestic relations. The Court pointed out that New York, at the time Windsor and Spyer were married in Canada, may not have allowed same-sex marriage within the state, but its laws protected those who were legally married elsewhere by applying its laws equally to all married people. It was also pointed out that New York eventually expanded its laws to include same-sex marriage.

In addition to the fact that states have traditionally had the role of determining what the domestic relations laws should be within their own territories, the Court looked at the purpose and impact of DOMA itself. The Court came to the conclusion that because of the purpose written into the law itself along with the impact of the law, that DOMA has the purpose “to discourage enactment of state same-sex marriage laws and to restrict the freedom and choice of couples married under those laws if they are enacted.”¹ The Court concluded that this historical balance between state and Federal law had been negatively impacted when DOMA, Section 3, was enacted.

The Court ruled in this case that DOMA violated the 5th Amendment of the U.S. Constitution because its “demonstrated purpose is to ensure that if any State decides to recognize same-sex marriages, those unions will be treated as second-class marriages for purposes of federal law.”¹ This obviously deprives “some couples married under the laws of their State, but not other couples, of both rights and responsibilities.”¹

Effect on Medicaid

Section 3 of DOMA, which defined marriage as only a union between a man and a woman, applied to over 1000 federal laws, including benefits such as Medicaid, Social Security, housing, food stamps, tax laws, benefits due to federal employees, and veterans benefits. In some cases the application of DOMA took away rights of same-sex married couples and, in others, it relieved them of certain responsibilities.

As professionals serving the elderly, it is important to know how the overturning of this portion of the law will affect seniors. The answer is it will vary depending on what state the couple was married in, and what state they currently reside in. While the result of overturning Section 3 of the DOMA is far-reaching, it does not completely equalize the playing field.

With regard to Medicaid, whether a couple may be impacted depends on whether they are: 1) validly married; 2) living in a state that recognizes their marriage; and/or 3) In a civil union or registered domestic partnership and the state recognizes the relationship.

Currently 12 states and the District of Columbia recognize same-sex marriages. In these states, Medicaid will also recognize the marriage. This means that the Medicaid rules will change for same-sex married elders. The positive changes for these elders could include an increased allowance as currently allowed for married couples. Another advantage will be the ability of the ill spouse to transfer assets to the well spouse without penalty and the ability to receive some of the income of the ill spouse once qualified for Medicaid under the Spousal Impoverishment Act provisions.

In a state that does not recognize an otherwise valid same-sex marriage, Medicaid will also likely not

recognize the union. However, some states do provide hardship protections to a partner of a person in long term care.²

Finally, in a state that recognizes civil unions or registered domestic partnerships, a couple so joined *may* be treated as married by Medicaid. This is a situation which will vary based on several factors and the tax treatment of these couples by the IRS may determine the answer.

Impact on Other Government Benefits

This decision will likely impact Social Security Income (SSI) recipients, as well as veterans receiving either pension or compensation benefits. It will likely take months before we fully understand the impact of the Court's decision in these areas, as each agency determines how best to apply the decision.

Conclusion

Medicaid alone is a complex program, even for single individuals. With the new opportunities that have opened up for married couples of the same sex, the need for the assistance of an Elder Law attorney is even greater. If we can help someone you know, please don't hesitate to contact us.

Other references:

Supreme Court Boosts Gay Marriage (The Hill – www.thehill.com)

To comply with the U.S. Treasury regulations, we must inform you that (i) any U.S. federal tax advice contained in this newsletter was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person and (ii) each taxpayer should seek advice from their tax advisor based on the taxpayer's particular circumstances.

² LGBT Organizations Fact Sheet Series: After DOMA What it Means for You
<https://www.glad.org/current/post/after-doma-fact-sheets>