

How law compensates family caregivers

By Denice A. Gierach – Law Talk

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Many Naperville families have disabled parents, siblings or children that they take care of. In fact, the generation that cares for elderly parents and for their own children at the same time is known as the "sandwich generation."

The sandwich generation is in a difficult situation. Their disabled parent may have some money, but not enough for caretaking without the help of family members. The family members may have to pass on their own opportunities to earn income to take care of their disabled family members.

To compensate that family caretaker and to promote a family member taking care of a disabled parent, sibling or child, there is a part of the Illinois Probate Act that was enacted in 1988, which allowed the family caretaker to file a claim in probate court for their services, after the disabled individual's death. This statute overrides the presumption that all services provided by family members are meant to be a gift by that family member.



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To qualify under this section of the law, the caretaker has to be a spouse, a parent, brother or sister or child of the disabled person. The caretaker also has to be living with and personally caring for the disabled person for at least three years. Then the caretaker has to file a claim with the probate estate during the six-month statutory claims period. This will allow the caretaker to receive assets from the estate before other family members who were not caretakers, but the federal and state estate taxes will be paid first before this claim. The amount of any funds paid to the caretaker for this claim are treated as income to the caretaker and that caretaker will owe federal and state and self-employment taxes on the income, which is treated as compensation for services.

The amount of the claim is determined by the court and is based on the nature and extent of the person's disability, taking into account the assets available and the lost employment opportunities of the caretaker, the lost lifestyle opportunities of the caretaker and the emotional distress that the caretaker had gone through to take care of the disabled person.

In 2008, the statute was amended and minimum amounts were set. For instance, if the person is deemed to have had a 25 percent disability, the minimum amount would be \$45,000. If the disabled person had a 50 percent disability, the amount would be \$90,000; \$135,000 for 75 percent disability; and \$180,000 for a 100 percent disability. The statute allows the court to consider reducing these amounts by any benefit that the caretaker received from the disabled person such as free housing costs or other separate financial benefits given to the caretaker.

For the family member who is interested in taking care of a disabled family member, this may be helpful to address the caretaker's lost employment and other opportunities while caring for the disabled family member.

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