

Legal Issues in an Age of Aging

Pennsylvania Necessities & Support Laws

Dietrich Law Firm

PENNSYLVANIA BAR INSTITUTE
Continuing Education Arm of the Pennsylvania Bar Association

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Philadelphia, PA

Support Act

Children, Parents & Spouse



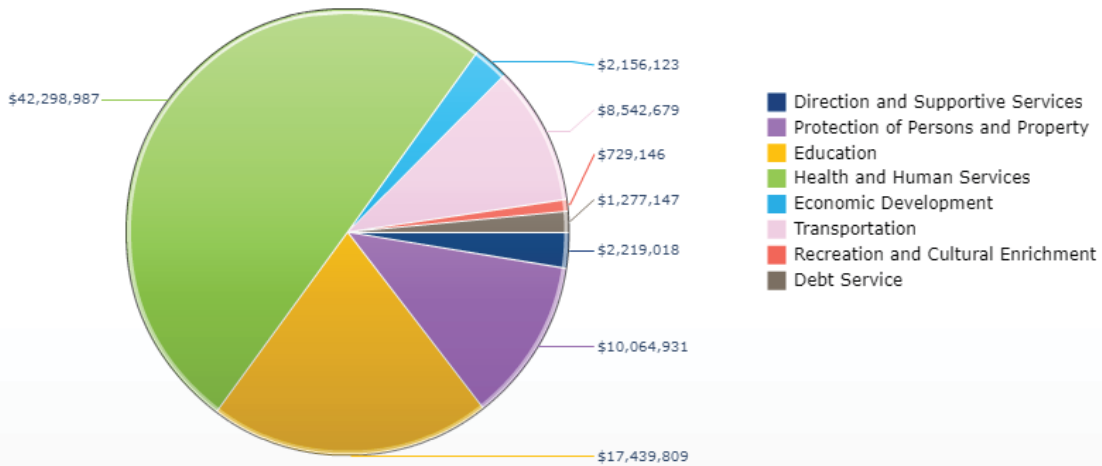
CLIENT

- Elderly Person
- Son / Daughter of Elderly Person
- Grandchild of Elderly Person
- Niece / Nephew of Elderly Person
- Third Party to the Elderly Person

- ENGLISH POOR RELIEF ACT OF 1601
- SUPPORT OBLIGATION CREATED BY STATUTE
- GOVERNMENT ENACTED SUPPORT LAWS TO REQUIRE CERTAIN FAMILY MEMBERS TO PAY FOR SERVICES
- GOVERNMENT = PAYOR-OF-LAST-RESORT (MEDICAID)
- PENNSYLVANIA BUDGET = APPROXIMATELY 50% OF STATE BUDGET FOR HEALTH AND WELFARE PROGRAMS

Proposed 2018-2019 State Budget

Total Operating Budget by Program
(Dollar Amounts in Thousands)



Source: <https://www.budget.pa.gov/PublicationsAndReports/>

PENNSYLVANIA SUPPORT ACT 23 PA. C.S.A. § 4601

- CHILDREN
- SPOUSE
- PARENT

(NO PRIORITY TO ORDER OF LIABILITY)

CASES

- **Presbyterian Medical Center v. Budd**
832 A.2d 1066 (Pa. Super 2003)
- **Commonwealth..... v. Kotzker**
118 A.2d 271 (Pa. Super 1955)
- **Albert Einstein Med. Center v. Foreman**
243 A.2d 181 (Pa. Super 1968)
- **In re Stone's Estate**
358 Pa. 252 (Pa. 1948)
- **Savoy v. Savoy**
641 A.2d. 596 (Pa. Super 1994)
- **Pittas Case**
2012 Pa. Super 96



Cost = \$ 100.00



You only have \$36.00

Indigent Definition

[T]he indigent person need not be helpless and in extreme want, so completely destitute of property, as to require assistance from the public. Indigent persons are those who do not have sufficient means to pay for their own care and maintenance. “indigent “ includes, but is not limited to, those who are completely destitute and helpless. It also encompasses those persons who have some limited means, but whose means are not sufficient to adequately provide for their maintenance and support

- Savoy v. Savoy , 641 A.2d 596 (Pa. Super. 1994)

PITTAS CASE SUMMARY

- Filial Support Action (23 Pa.C.S.A. § 4603)
- Facility held son accountable for mother’s debt for long term care services (\$ 92,943.41)
- Burden to Establish “ Financial Ability to Support “
 - Burden on Movant to Establish
 - Substantive component of Claim
 - Minimum Evidence may suffice
 - Beware of Discovery Waiver issues

PITTAS CASE SUMMARY

Nothing in the Act requires a stay pending

- (1) Disposition of Mother's Medicaid Application,
- (2) Appeal – Fair Hearing

Nothing in the Act requires court to consider alternative Sources of Income

- (1) Spouse's Income
- (2) Other Children of Mother Income

Court determined Son had right to Join other Defendants to the case (Spouse & other Children)

Necessities Act

Spouse



Porter v. Karivalis

718 A.2d. 823 (Pa. Super 1009)

Necessities Act Claim (23 Pa. C.S.A. § 4102)

Spouse held liable for debt of other spouse

No Financial ability component in Necessities Act

Montgomery County Case decided by Judge Brown

NECESSITIES ACT vs. SUPPORT ACT

Necessities Act

- SPOUSE ONLY
- NO FINANCIAL REVIEW

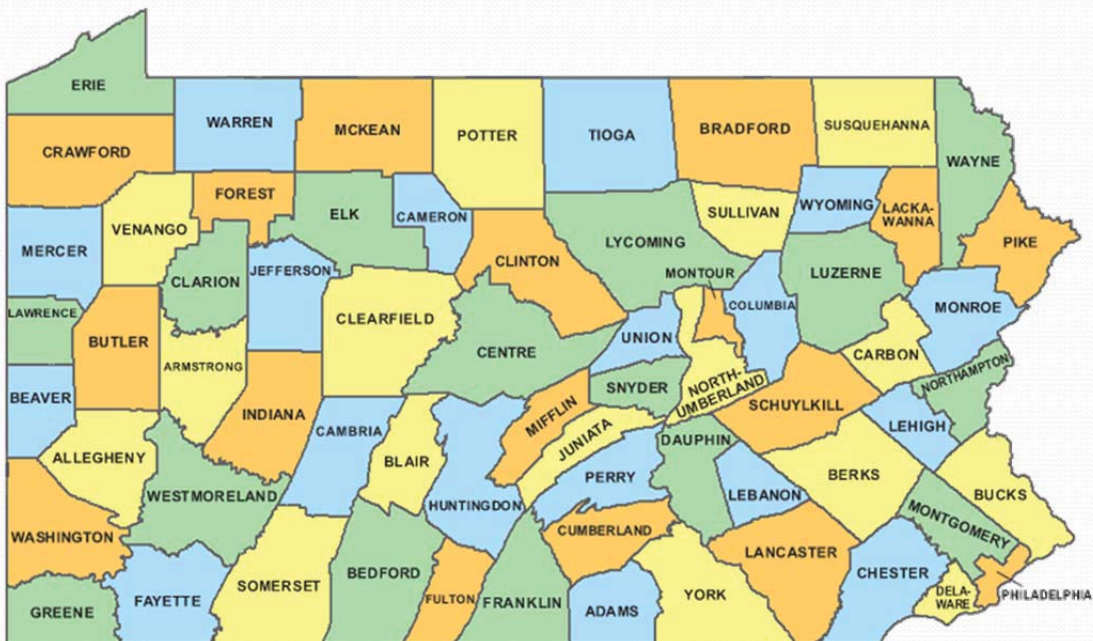
Support Act

- SPOUSE
- CHILDREN
- PARENTS
- WITH FINANCIAL REVIEW

DEPARTMENT OF PUBLIC ASSISTANCE



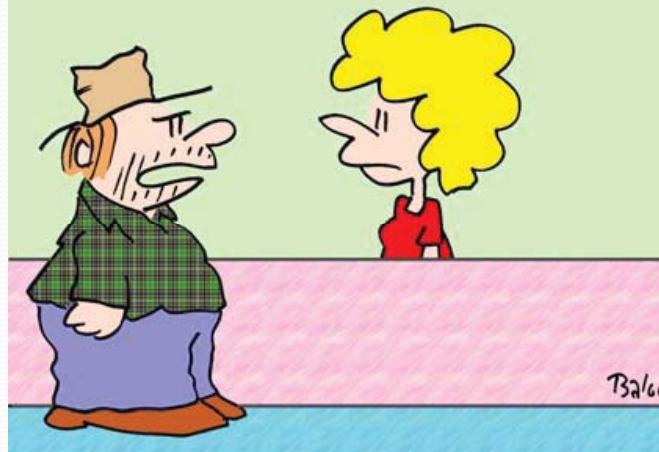
"I've been getting regular welfare checks for the past sixteen years, and now, all of a sudden, you say I'm *ineligible*?"



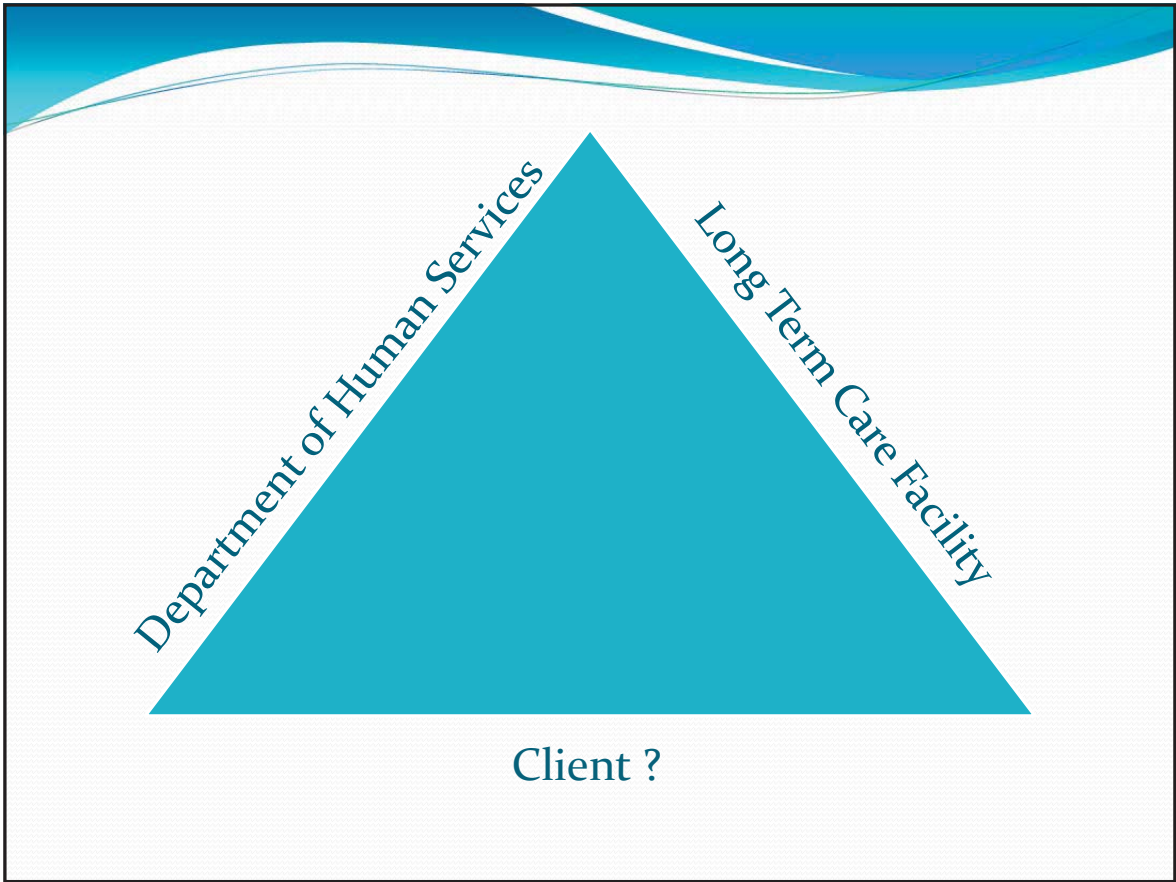
COMPOUNDING ISSUES

- Larger Number of Elderly Applying for Benefits
- Fewer experienced DHS CAO Caseworkers
- Reduced Number of Facility Personnel Hours
- More difficult Application Problems
- Larger number of Cases requiring Legal Representation

DEPARTMENT OF PUBLIC ASSISTANCE



"This is a lot of trouble! — Why can't I sign up on line?"



CLOSING COMMENTS

- **IDENTIFY YOUR CLIENT**

- ELDERLY PERSON
- FAMILY MEMBER OF ELDERLY PERSON
- FRIEND OF ELDERLY PERSON

- **QUESTIONS**

- WHAT PROFESSIONAL SERVICES AM I PROVIDING ?
- WHY AM I OPPOSING THE CARE FACILITY ?
- WHO BENEFITS MOST FROM MY PROFESSIONAL SERVICES ?

- **WHAT IS IN THE BEST INTEREST OF THE ELDERLY PERSON ?**

- **TRI-ANGLE LITIGATION DILEMMA**

- **FAMILY** - **FACILITY** - **D.H.S.**





Thank-You!

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