



# PLANNING A MORE SECURE FUTURE

Thomas F. Kendziorski, Esq.

([tfk@thearcoakland.org](mailto:tfk@thearcoakland.org))

Kathleen E. Winkler, Esq.

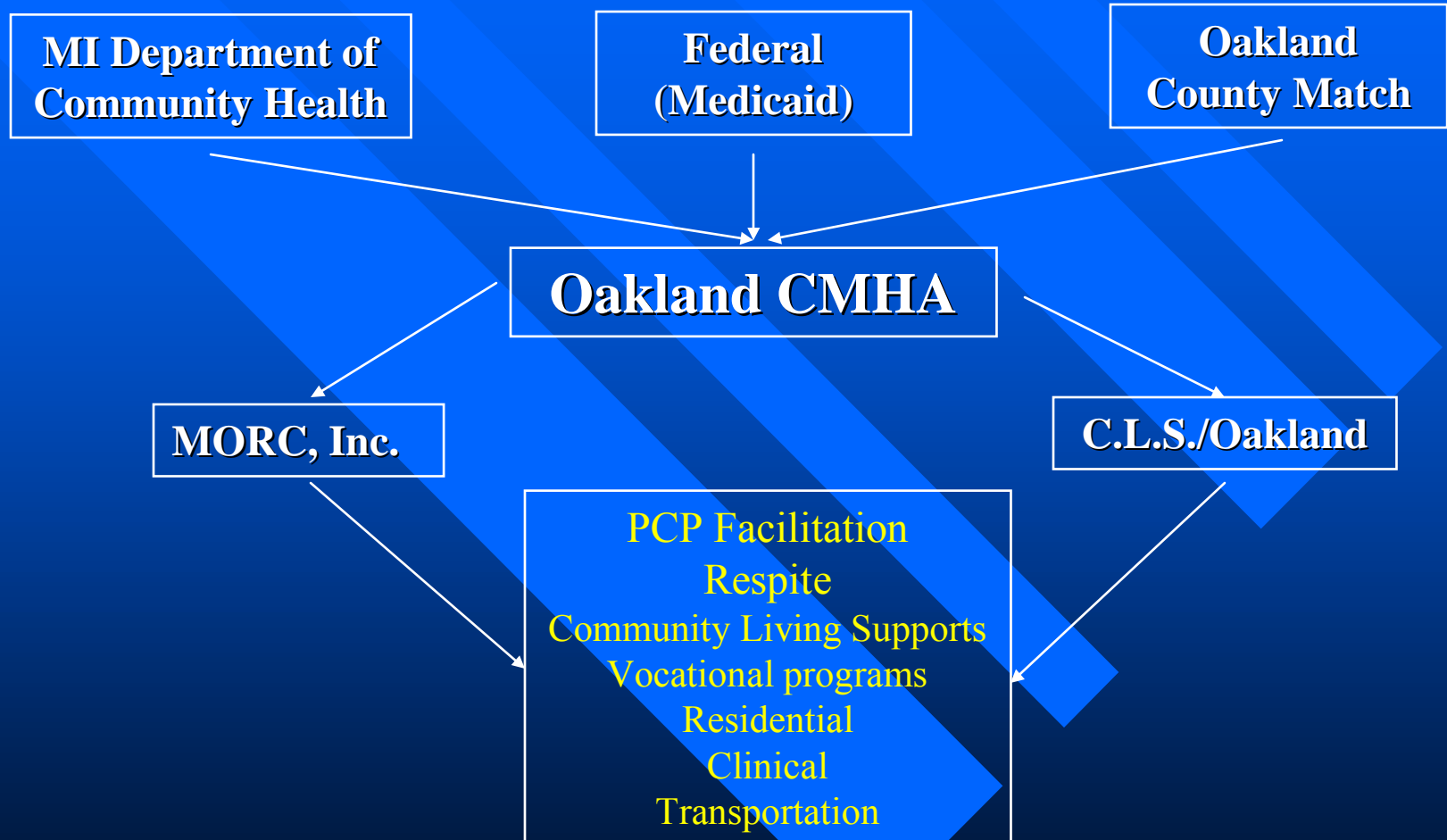
([kew@thearcoakland.org](mailto:kew@thearcoakland.org))

\*\*\*\*\*

The Arc of Oakland County, Inc.

Revised: 1/1/2010

# The “Mental Health System”



# Related to the Mental Health System

- Michigan Department of Human Services
  1. Adult Home Help Services (“Chore”)
  2. Medicaid
    - > (hospitals, doctors, pharmacy, and CMHA services)

- Social Security Administration
  1. SSI
  2. SSDI
    - > Medicare (hospitals, doctors, and pharmacy-1/06)

# Related to the Mental Health System (continued)

## ■ Probate court

1. Guardianship

## ■ Education-Vocational and Transition

1. School district
2. Michigan Rehabilitation Services
3. JVS, New Horizons, Judson Center, etc.

## ■ Private attorney

1. Power of Attorney
2. Estate Planning (wills & trusts)
3. Financial planning referral

# Information about The Arc

## ■ Contact Information:

### > Address:

The Arc of Oakland Co.  
1641 W. Big Beaver Road  
Troy, MI 48084-3501

### > Telephone: 248-816-1900

### > Fax: 248-816-1906

### > E-Mail:

[tfk@thearcoakland.org](mailto:tfk@thearcoakland.org) (Tom)

[kew@thearcoakland.org](mailto:kew@thearcoakland.org) (Katie)

### > Website:

[www.thearcoakland.org](http://www.thearcoakland.org)

## ■ Membership:

> \$55/year – Under 62

> \$45/year – 62 and over

> \$100/year – Group

> \$1,000 - Lifetime

BASIC REQUIREMENTS FOR BECOMING  
ELIGIBLE FOR  
SUPPLEMENTAL SECURITY INCOME (“SSI”)

A. Cannot have liquid assets over \$2,000;

AND

B. Must have a disabling condition that is severe enough so that the person cannot perform “substantial gainful activity” or competitive employment.

# OTHER THINGS TO CONSIDER WHEN APPLYING FOR SSI

- Earned income (\$65 gross/month)
- Unearned income (\$20/month)
- Deemed income (if applicant is minor)
- Items the Social Security Administration (SSA) will need:
  - > application form
  - > recent psychological evaluation (WAIS; Ph.D.)
  - > other pertinent medical reports
  - > birth certificate

# OTHER THINGS TO CONSIDER WHEN APPLYING FOR SSI

- > Social Security card
- > Vocational evaluation
- > Pay stubs from any employment
- > Stocks, bonds, insurance policies
- > Bank statements (checking/savings)

## ■ Appeals

- \* Administrative Law Judge (SSA); **24 months or so before a hearing will be scheduled!**
- \* Appeals Council (SSA)
- \* Federal Court

# SSI DEEMING OF INCOME - PARENT TO MINOR CHILD

(2009 only – 2010 rates unavailable at this time)

Number of Ineligible Children ↓	EARNED	UNEARNED
	1 Parent / 2 Parents	1 Parent / 2 Parents
0 Eligibility Ceases annual gross income>>	\$2,821 / \$3,495 (\$33,852/\$41,940)	\$1,388 / \$1,725 (\$16,656/\$20,700)
1 Eligibility Ceases annual gross income>>	\$3,158 / \$3,832 (\$37,896/\$45,984)	\$1,725 / \$2,062 (\$20,700/\$24,744)
2 Eligibility Ceases annual gross income>>	\$3,495 / \$4,169 (\$41,940/\$50,028)	\$2,062 / \$2,399 (\$24,744/\$28,788)
3 Eligibility Ceases annual gross income>>	\$3,832 / \$4,506 (\$45,984/\$54,072)	\$2,399 / \$2,736 (\$28,788/\$32,832)
4 Eligibility Ceases annual gross income>>	\$4,169 / \$4,843 (\$50,028/\$58,116)	\$2,736 / \$3,073 (\$32,832/\$36,876)

# SSI DEEMING OF INCOME (continued)

The previous chart does not apply when ...

- The parent(s) receives both earned income (e.g., wages or net earnings from self-employment) and unearned income (e.g., Social Security benefits, pensions, unemployment compensation, interest income, and State disability).
- The parent(s) receives a public income maintenance payment such as Temporary Assistance for Needy Families (TANF), or a needs-based pension from the Department of Veterans Affairs.
- The parent pays court-ordered support payments.
- The child has income of his or her own.
- Any ineligible child has income of his or her own, marries, or leaves the home.
- There is more than one disabled child applying for or receiving SSI.
- The State supplements the Federal benefit (---not in Michigan!).

# SSI RATES (effective: January 1, 2010)

[there is no federal/state Cost-of-Living increase]

<u>LIVING SITUATIONS</u>	<u>FEDERAL</u>	<u>STATE</u>	<u>TOTAL</u>
Household of Another	\$449.33	<u>\$9.33*</u>	\$458.66
<b>Sharing/Independent</b>	\$674.00	<u><b>\$0***</b></u>	\$674.00
Personal Care/Group Home	\$674.00	\$157.50	\$831.50
Couple-House of Another	\$674.34	<u>\$18.66*</u>	\$693.00
<b>Couple-Independent</b>	\$1011.00	<u><b>\$0***</b></u>	\$1011.00

\*The payment of the state supplement to SSI is sent on a quarterly basis by the Michigan government for these situations. Benefit checks are mailed about the 10<sup>th</sup> of March, June, September and December.

**\*\*\*Governor Granholm's Executive Order effective 7/1/09 suspended the state's SSI supplement until further notice.**

## SSI RATES (continued - 2010)

- The “personal needs income” or “incidental needs allowance” for 2010 is **\$44.00** per month for the Personal Care (group home) rate of SSI.
- A person living in a licensed group home must remit **\$787.50** per month from the SSI payment.
- Licensed group home providers receive an additional **\$184.38** per month for each consumer in residence (effective: 10/1/06).
- Concurrent recipients of SSI and Social Security Disability (SSDI) benefits receive an additional **\$20** for each living situation.
- Medicare “Part B” premium increased to **\$110.50** a month for 2010. The SSDI Substantial Gainful Activity (SGA) work earnings ceiling for 2010 is \$1,000.00 per month (\$1,640 if blind).
- The asset limit for 2010 is still **\$2,000** for an individual and **\$3,000** for a couple.

# MEDICAID

- Automatic health insurance benefit if receiving SSI in Michigan.
- Covers all hospital and doctor's office costs as long as the medical provider is a participant in MEDICAID either independently or through a HMO sponsor.
- Fairly good prescription coverage benefit; very limited coverage for vision and dental needs.
- Consumer must be enrolled in HMO, unless a Medicare recipient, or has qualified for a "medical exception" based on unique circumstances.

## SECTION 1619a – Special SSI Cash Benefits

- **Section 1619a** is a special provision of the Social Security Act that allows qualified SSI recipients to continue receiving benefits even though they earn wages higher than their SSI check amount.



## SECTION 1619a (continued)

To qualify for the special SSI Cash Benefits, an SSI recipient must:

1. Be under age 65 and NOT blind. Those over 65 and/or blind do not lose any benefits when they perform work.
2. Continue to have a qualifying medical impairment.
3. Meet all routine SSI eligibility criteria.
4. Already receiving SSI during past 12 months.

-----

> Under section 1619a, working SSI recipients have the potential to earn a certain level of wages before losing all cash benefits. These amounts, called, “BREAKPOINTS,” are dependent upon living situations and do not reflect adjustments made for Impairment Related Work Expenses (IRWE’s).

## SECTION 1619a (2010)

### ■ Breakpoints for working recipients of SSI

#### INDEPENDENT

\$674.00	(benefit, Fed & MI)
<u>    x    2</u>	(twice the benefit)
1348.00	
+ 65.00	(earned income disregard)
<u>+ 20.00</u>	(unearned disregard)
\$1433.00	
<u>- 0.00</u>	(minus 2x Michigan's SSI payment; zero for 2010 at the Independent Rates)
\$1433.00	(max. earnings before last dollar is gone in SSI; i.e., \$1432 still allows for \$1 in SSI)

## SECTION 1619b – Extended Medicaid Benefits



- **Section 1619b** occurs when a SSI recipient exceeds the “Breakpoints” for special cash benefits. If one loses the eligibility for SSI money benefits, then there remains the potential to retain **MEDICAID** coverage.

## SECTION 1619b – Extended Medicaid Benefits (continued)

This provision of the law (Section 1619b) especially benefits two groups:

- Working SSI recipients whose only benefit is SSI and whose earnings in one or all months are too large to maintain SSI eligibility, either for “regular” or 1619a “Special Cash Benefits; or
- Concurrent recipients who have larger Social Security disability checks and relatively small SSI checks.

## SECTION 1619b – Extended Medicaid Benefits (continued)

In all cases, in order to be eligible for “extended MEDICAID” under Section 1619b, a person must:

- Be under age 65;
- Have blindness or other severe impairment;
- Already eligible for SSI;
- Need MEDICAID to work (must show that recipient used MEDICAID in the last 12 months, or alleges that it will be used in the coming year);
- Unable to afford medical care without assistance.

## SECTION 1619b – Extended Medicaid Benefits (continued)

### THRESHOLD AMOUNT (2010)

The inability to afford medical care without assistance is a requirement in order to receive extended MEDICAID benefits under Section 1619b. There exists a formula developed by the SSA that results in a maximum amount of gross earnings when even SSI extended MEDICAID benefits will cease. In Michigan for 2010, it is 27,858.00 (\$27,653.00 for 2009). In other words, an SSI recipient in Michigan who no longer has SSI monies coming in because they worked themselves off SSI, will keep MEDICAID eligibility as long as their gross annual income is less than \$27,858.00.

# Social Security Disability Insurance (SSDI) Benefits

There are four ways to receive SSDI:

1. Work and pay into the Social Security Administration (SSA) system through F.I.C.A. over a period of time known as “quarters of earnings.”
2. Insured parent through SSA is disabled.
3. Insured parent through SSA is retired, over 62, and receiving SSA pension.
4. Insured parent is deceased.

# Social Security Disability Insurance (SSDI) Benefits (continued) - MEDICARE

- **MEDICARE** is a component of SSDI. This medical coverage begins two years after the first SSDI benefit check is received by the consumer.
- **MEDICARE** is generally an 80%/20% type of health insurance where the recipient is personally responsible for 20% of the medical costs.
- **MEDICARE** has “Part A” (hospital coverage), which is automatic, and also has “Part B” coverage (out-patient/clinic/doctor’s office) for a monthly standard premium of **\$110.50 in 2010** (for single adults with incomes under \$85,000; married under \$170K). Because there is no federal COLA increase for 2010, the 2008/2009 premium of **\$96.40** will remain in place for most beneficiaries [*see: [www.ssa.gov/pubs/10161.html](http://www.ssa.gov/pubs/10161.html)*]. **This premium is still paid by the the state for Medicaid-eligible consumers in Michigan.**

# CONCURRENT RECIPIENTS OF SSI AND SSDI BENEFITS

- This means that the consumer is eligible for some level of each benefit.
  - The SSI benefit level must be reduced by the amount of SSDI.
  - Overall, the person receives \$20 more of SSI benefit per living situation (additional “personal needs” allowance).
  - MEDICAID and MEDICARE coverage.

## DUAL ELIGIBLES FOR MEDICARE AND MEDICAID BENEFITS

- Consumers under the age of 65 who are “dual eligible,” that is, who receive both Medicare and Medicaid, began receiving their prescription medicine coverage from **Medicare** instead of Medicaid on January 1, 2006.
- Consumers receiving only Medicaid will continue to receive Rx’s through Medicaid.

# WORK AND ITS EFFECT ON DISABILITY BENEFITS

## SSI

Generally, there is a “2 for 1 take-away” rule in effect. That is, for every \$2 earned above \$65 gross earnings per calendar month, \$1 is taken away in SSI benefits.

## SSDI

The concept of “Substantial Gainful Activity (SGA)” applies. Specifically, gross monthly earnings over \$1000 (2010) [\$1640 if blind] means no benefit after using up a Trial Work Period.

# WORK AND ITS EFFECT ON DISABILITY BENEFITS (2010)

## SSI

### Example:

\$300 (gross wages for month)  
- 65 (earned income disregard)  
- 20 (unearned disregard)  
-----  
- 215

(divide by 2)

\$107.50 (amount to be deducted from  
SSI check two months later)

-----  
\$674.00 (2010 Fed. SSI rate)  
-107.50 (SSI work disregard)  
\$566.50 (SSI due for month)

## SSDI

### For Example:

Gross month's wages of  
\$401.00 → full benefit. Gross  
month's wages of \$1,000.00  
and over → then no benefit.

-----  
*Trial Work Period (TWP)* – allows  
consumer unlimited earnings  
during 9 month period, either  
consecutive or non-consecutive,  
and still maintain full benefit.  
TWP is triggered at \$720-\$999  
of gross wages during a month.

# WORK AND ITS EFFECT ON DISABILITY BENEFITS (2010)

## SSI

There is no “Michigan SSI” supplement included in the earnings computation because if a consumer is only eligible for the \$9/\$14 from the state, there is NO benefit payment at all.

**CAVEAT: Michigan no longer provides a \$14 state supplement to the Independent Rates of SSI.**

## SSDI

### Further Work Limitations

**\$720** SSDI does not count earned income below this amount for month.

**\$720-\$999** When all earned gross income is subject to TWP.

**\$1000** When work is considered to be SGA and therefore, no benefits (\$1640, if blind).

# IMPAIRMENT RELATED WORK EXPENSES (IRWE)

How can SSI and SSDI help with work expenses?

The rules operate the same as if the consumer were receiving either disability benefit. Work expenses that are related to one's disability are deducted from earnings when the SSA figures if they are high enough to affect benefits. These expenses may include work equipment, such as a special typewriter, keyboard or desk, or modifications to a car or home to help a person get to and from work. This means that a consumer can earn well over the SSI or SSDI limits and still continue to get benefit payments.

# IMPAIRMENT RELATED WORK EXPENSES (IRWE) (continued)



- Since 12/1/80, SSI and/or SSDI recipients have been able to exclude IRWE's from earnings for determination of continuing benefits eligibility and/or payment amounts.
- IRWE's cannot be used to establish initial eligibility, only to maintain continuing eligibility.

# IMPAIRMENT RELATED WORK EXPENSES (IRWE) (continued)

## SSI

An IRWE is deducted from earnings after the \$65 earned income disregard and before the exclusion of one-half of the remaining earned income.

## SSDI

For SSDI recipients, an IRWE can only be subtracted from gross earnings when SSA is trying to determine whether SGA is being performed and whether a disability still exists.

# IMPAIRMENT RELATED WORK EXPENSES (IRWE) (continued)

- In order to qualify for an IRWE, the expense must have been **paid for out of the recipient's own pocket** and the service or item purchased must be **disability-related** and necessary in order for the recipient to work. Examples include:

- \*attendant care services

- \*job coaches

- \*ramp on home

- \*medical devices, equipment and/or prostheses  
(and the maintenance and upkeep costs)

- \*special kinds of transportation

- \*special medications

## IMPAIRMENT RELATED WORK EXPENSES (IRWE) (continued)

- A large expense (like a down payment on a lift or the cost of converting a car to hand controls) can be prorated over the course of 12 months, if desired. This monthly prorated amount can be considered an IRWE along with the amount of a regular monthly payment for these larger expenses.

# Estate Planning (wills & trusts)

- Everyone needs a Last Will and Testament. Thirty percent of all lawyers die without wills (...physician heal thyself!).
- If you don't make a will, then the state makes one for you ... and you may not like the outcome.
- Estates and Protected Individuals Code (EPIC)



# INTESTATE SUCCESSION

(... leaving this world without a will)

## SURVIVING SPOUSE'S SHARE

- Entire estate if no descendant or parent.
- The first \$150K plus  $\frac{1}{2}$  of any balance if one or more surviving descendants are also descendants of the surviving spouse.
- The first \$150K plus  $\frac{3}{4}$  of any balance if no descendants but at least one surviving parent.
- The first \$100K plus  $\frac{1}{2}$  of any balance if the surviving descendants are not descendants of the surviving spouse.

# INTESTATE SUCCESSION

[...leaving this world without a will]  
(continued)

## IF NO SURVIVING SPOUSE

- 1<sup>ST</sup> – descendants by representation.
- 2<sup>nd</sup> – if no surviving descendant, to surviving parents equally or to the surviving parent.
- 3<sup>rd</sup> – if no surviving descendant or parent

MOTHER/FATHER (not surviving)

Descendants by representation

SIBLINGS

NIECES/NEPHEWS

GRAND NIECES/NEPHEWS

GREAT GRAND NIECES/NEPHEWS

# INTESTATE SUCCESSION

[...leaving this world without a will]  
(continued)

## EXEMPT PROPERTY AND ALLOWANCES

### Homestead Allowance - \$15,000

1<sup>st</sup> – surviving spouse

2<sup>nd</sup> – minor and dependant children equally up to \$15K

**Family Allowance** – “Reasonable” to surviving spouse and minor children obligated to support and children of descendant or another who were in fact being supported by descendant.

>cannot continue more than 1 year – if estate is insolvent

>has priority over all claims except homestead allowance

>Personal Representative may determine the amount not to exceed \$18K.

# BASIC ELEMENTS OF A TRUST

## FUNDING:

- 1) Property
- 2) Cash
- 3) Insurance
- 4) Etc.

RES  
(Principal)



TRUSTEE  
(legal title)



BENEFICIARY

DEATH



REMAINDERPERSON

## CO-TRUSTEE:

- 1) Bank
- 2) Family Member
- 3) Trusted Person

# ESTATE TAX - 2010

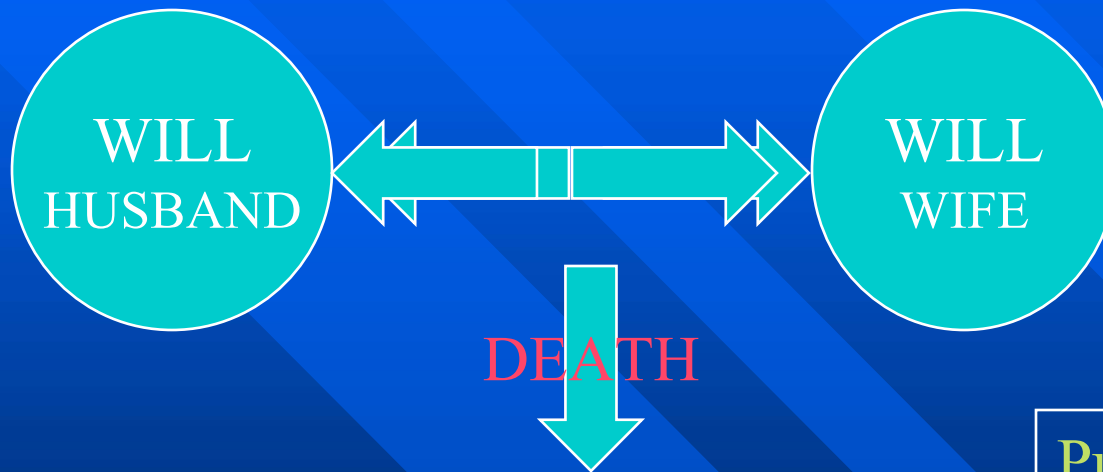
## (TAX RELIEF RECONCILIATION ACT OF 2001)

### ESTATE TAX PHASE OUT SCHEDULE:

<u>Year</u>	<u>Top estate tax rate</u>	<u>Exemption amount</u>
2002	50%	\$1 million
2003	49%	\$1 million
2004	48%	\$1.5 million
2005	47%	\$1.5 million
2006	46%	\$2 million
2007	45%	\$2 million
2008	45%	\$2 million
2009	45%	\$3.5 million
2010	Repealed!	N/A
2011	55%	\$1 million

# SPECIAL NEEDS TRUST

Testamentary Trust (part of a Last Will & Testament)



Spendthrift Discretionary Trust  
(beneficiary:  
child/adult with disability)

## Purpose:

- 1) \$ mgmt
- 2) SSI retain
- 3) Medicaid
- 4) CMHA  
attach

# ATTORNEY LISTING

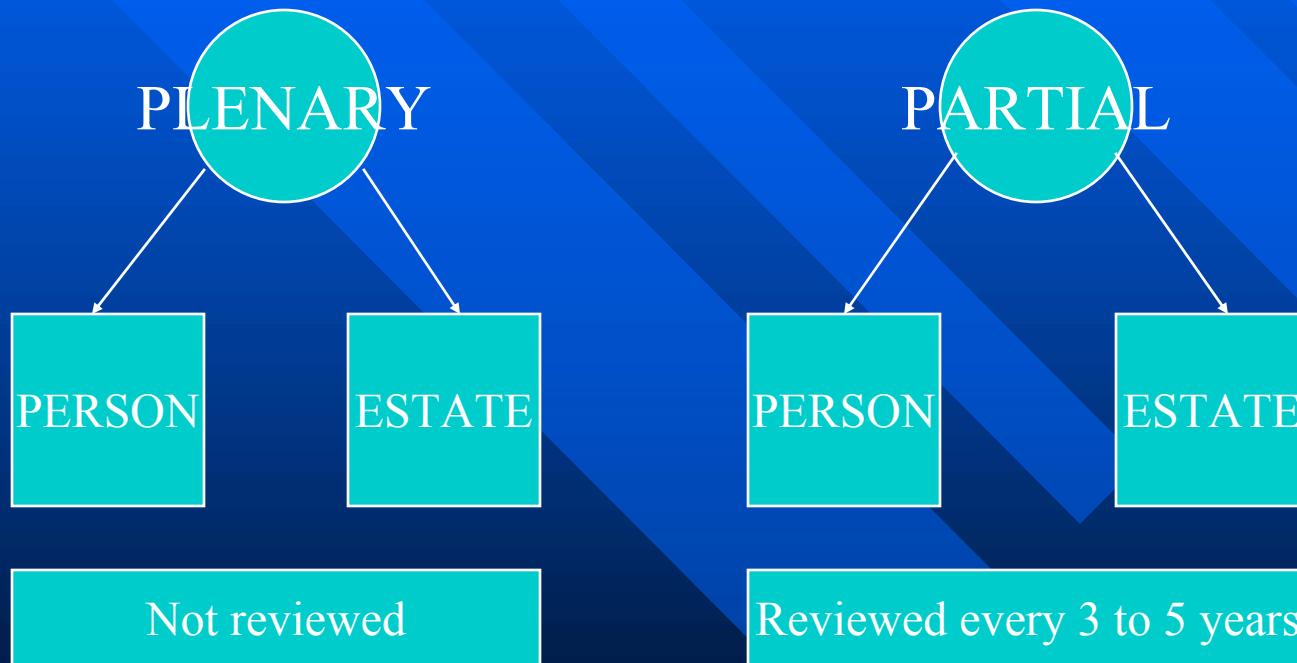
## ESTATE PLANNING (WILLS & TRUSTS)

Kathleen E. Winkler	248-816-1900	Troy (The Arc)
Mary T. Schmitt Smith	248-282-7700	Bloomfield Hills
Patricia E. Kefalas Dudek	248-731-3099	Bloomfield Hills
Donald L. Rosenberg	248-641-7070	Troy
J. Douglas Otlewski	248-651-6040	Rochester
Joshua R. Fink	734-665-4441	Ann Arbor
Burton E. Isaacs	248-354-3200	Southfield
James P. Lampertius	248-538-5480	Farm. Hills
Sanford Mall	248-538-1800	Farm. Hills
Marsha L. Tuck	248-335-0730	Bloomfield Hills
Thomas V. Trainer	248-740-5673	Troy

# GUARDIANSHIP

(Chapter Six – Michigan Mental Health Code)

- Michigan Mental Health Code states guardianship only: “... as is necessary” - “... partial is the preferred choice.”



# QUESTIONS?



Thank you for your attention! Remember, appointments at The Arc of Oakland County are always welcome ... as is membership.