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Victory for Holocaust Survivors

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The dwindling number of aging Holocaust survivors in New York State had a recent victory. The New York State Medicaid program made an important ruling reversing an earlier fair hearing decision which would have denied an elderly Holocaust survivor's application for Medicaid benefits to pay for his nursing home care. This ruling vindicates the rights of all Holocaust survivors. Medicaid is a federally-funded program for people who are financially needy. Complicated rules define who is poor enough to qualify for the benefit. Under these rules, some financial assets are considered "exempt" and do not have to be spent to qualify for Medicaid. For example, the home that the Medicaid applicant lives in generally does not have to be sold in order for an individual to qualify. Another important exclusion was enacted by Congress in 1994, which states that reparations paid to victims of Nazi persecution do not have to be spent in order for a Holocaust survivor to qualify for Medicaid.

The elderly man who won this appeal had received an average of \$6,000 each year since 1952 in German reparations, and managed to save about two-thirds of those funds. Over these fifty-five years, during which time he worked and raised a family, he had deposited these funds in many different accounts, sometimes mixing them with his earnings or other sources of income. Finally, when he had long since retired, become frail, and was about to apply for Medicaid, he gathered the funds in a single dedicated Reparations Account. The local Medicaid program in

Rockland County, New York insisted that he spend these funds in order to qualify for Medicaid. The county claimed that since the reparations had been deposited over the years in the same accounts with other income, he could not prove that these funds were the very reparations received from Germany. The elder law firm of Littman Krooks LLP represented this man at a hearing, at which the law firm introduced evidence of the exact amount of reparations received in each of the last 55 years, along with citation to the appropriate provisions of law showing that the Reparations funds did not have to be kept physically apart from other funds in order to be separately identifiable as exempt Reparations. Nevertheless, after the hearing, the State Medicaid program agreed with Rockland County and refused to grant Medicaid until he spent all the funds in the Reparations Account on his nursing home care.

The law firm then contacted the Evelyn Frank Legal Resources Program at Selfhelp Community Services, Inc., which took a special interest in this case, having been founded in 1936 to help the waves of émigrés from Nazi Germany find employment, housing, and a meaningful new life. Today Selfhelp cares for a greater number of Holocaust survivors than any other organization in North America. As this frail population continues to age into their 70's, 80's and beyond, their needs are more pressing than ever. Selfhelp's continuing commitment is to be the "last remaining relative" to any survivor of Nazi persecution who asks for its assistance.

Together with the assistance of Littman Krooks LLP, Selfhelp appealed to the State Medicaid program for a review of the initial fair hearing determination. The State Medicaid program, having heard the arguments on appeal, agreed to reverse its own hearing decision, and agreed that the funds in the Reparations Account were excluded and did not have to be spent before Medicaid would pay for this man's nursing home care. The State's decision found that it was sufficient that this man could document each and every monthly payment he had received from Germany over 55 years – he did not also have to prove which account he deposited these payments in over all of these years. By this decision, the State has relieved aging Holocaust

survivors of a burden of proof that would be impossible to meet, ensuring them access to Medicaid for vital long term care services.

Selfhelp Community Services, Inc. is a leading not-for-profit organization that provides housing, home care, Nazi victim and social services to help nearly 20,000 seniors live independently in their own homes. Selfhelp's comprehensive services for primarily low-income seniors and families "at risk" are offered at program sites in Manhattan, the Bronx, Brooklyn, Queens, Nassau and Suffolk counties.

Littman Krooks LLP is a law firm that specializes in the areas of elder law, estate planning, special needs planning, and guardianship. The firm has offices in White Plains and New York City, and will soon be opening an office in Dutchess County. The website is <http://www.elderlawnewyork.com/about.php>