

## Tax Breaks for Guardianship Fees

During a recent conversation with one of our clients I was asked whether the legal expenses associated with a guardianship are tax deductible. For many of our clients, guardianship is inevitable. Parents of children with special needs experience an added financial burden and for many, this includes the legal fees associated with a guardianship. At 18 years old, an individual is legally emancipated and presumed competent to make decisions. However, generally speaking, in order for physicians to render medical treatment, they must have the informed consent of their patients. This is why, upon turning 18, access to medical care becomes a primary concern of parents and one of the leading reasons families inquire about guardianship.

You may deduct expenses incurred for medical care for income tax purposes. Medical care is defined as costs paid for the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure of function of the body. If a guardianship is necessary to gain access to or consent to medical treatment, then the legal fees associated with obtaining the guardianship are properly included as a medical expense.

Although the fees associated with the general management of the guardianship are not deductible, there are times that further Court action is required and the legal fees associated deductible. For example, In Massachusetts, a Court must approve an incapacitated person's admission to a nursing facility, extraordinary surgical procedures, and treatment with an antipsychotic medication. In the case of treatment with antipsychotic medication, the Court will review the need for continued treatment at least annually, further increasing legal costs. In these situations, Court action is unavoidable under the law to ensure that medical treatment is a lawfully furnished and can be characterized as a necessary medical expense.

### COMMONLY OVERLOOKED MEDICAL EXPENSES:

Expenses incurred for medical care are deductible for income tax purposes. You can typically include expenses paid for yourself, your spouse, and dependents. The definition of medical care is quite broad, including all costs paid for the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure of function of the body. Many of these qualified expenses may go unclaimed. The following is a list of some, not all, expenses that are commonly overlooked:

- **Braille Books and Magazines:** If the cost is more than the regular printed editions.

- **Home Modifications/Improvements:** Amount for special equipment in the home, modifications or improvements if their main purpose is for medical care, limited to the amount over the increase in value to the property.
- **Special Modifications to a Vehicle**
- **Disabled Dependent Care**
- **Special Home for Intellectually and Developmentally Disabled:** Cost of a specialty home if based on recommendation of a clinician to help an individual adjust to community living.
- **Lead Paint Removal:** Removal of lead paint from surfaces to prevent a child who has or had lead poisoning from eating the paint.
- **Legal Fees:** You can deduct legal expenses incurred in connection with guardianship proceedings if necessary to gain access to or consent to medical treatment. Some legal expenses for enforcement of an IEP may also be deductible.
- **Long-Term Care:** Amounts paid for qualified long-term care services and premiums paid for qualified long-term care insurance contracts.
- **Medical Conferences:** Amounts paid for transportation and admission to a conference attended, such as a conference on a condition suffered by a dependent. The cost of meals and lodging is not deductible, but the conference itself is.
- **Special Education:** Fees paid for doctor's recommendations, child's tutoring, tuition, meals and lodging for special education schools.
- **Television:** Cost of television if displays audio for hearing-impaired person.
- **Transportation:** Amounts paid for transportation primarily for and essential to medical care, such as transportation expenses of a parent who must go with a child who need medical care.

Once all medical expenses are totaled, only the amount over 7.5% of adjusted gross income is deductible. As a result, many people may not benefit from this deduction. An alternative is to set-up a health savings account (HSA), which is a tax-exempt account to reimburse certain out of pocket medical expenses.

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