

Who's In Charge?

It is common for elderly patients with dementia to lose their ability to make sound financial decisions as the disease progresses. Problems managing money may be one of the first noticeable signs of dementia¹, and may not be discovered until after significant losses have occurred.

For example:

- Children may discover that an elderly parent has begun (uncharacteristically) donating huge sums of money to various organizations without explanation or justification.
- The opposite scenario – regular bills have been neglected and it is suddenly discovered that the bank account has been accruing charges or notices of utility shutoff arrive.

These can even occur while the patient still appears outwardly competent, can perform his activities of daily living independently, engage socially, and converse intelligently. There are, of course, more advanced cases, in which dementia has progressed significantly and the patient has the Halachic status of a *Shoteh*.

We will start by discussing the more serious case. If an Alzheimer's patient fulfills the Halachic criteria to be lacking *Da'as*, what should be done with his money? On the one hand, his possessions still belong to him, but, on the other, his finances need to be managed by someone else on his behalf. Ongoing financial decisions need to be made, including grocery purchases, utility and mortgage or rent payments, and medical treatments or medications (some of which can be significantly expensive). Likewise, his regular expenses (such as Shul membership, birthday gifts for his grandchildren, etc.) should be continued taking other necessary expenses into account.

Managing these affairs requires close attention to his financial situation; we cannot compare one who has significant savings to someone who has very little in his bank accounts. In this phase of life, it is not expected to earn money, therefore, every expenditure is significant. Prudence and good judgment must be employed to determine whether each expense is justified in light of his current financial state. Moreover, decisions that are made on his behalf should be consistent with the types of decisions he would have made while he was still lucid.

All of this requires a responsible party or guardian, known in Halachic literature as an "*Apotropos*". In Halacha, the Beis Din is responsible for appointing an *Apotropos*, though this chiefly is found in the context of young orphans who need a guardian to

¹ <https://www.nia.nih.gov/health/legal-and-financial-planning-people-alzheimers>

manage their inheritance until they grow up and reach the age of legal maturity and competence.²

If the deceased father had designated an *Apotropos* for his children, his decision is binding (unless the Beis Din rules that the individual is not fit for the task). However, he must have been specifically appointed to the role; if he was only the manager of the father's assets before his death but was not asked to assume the role of *Apotropos* for the children, he is not given the role even if the assets are currently under his management unless he is deemed to be proficient. These principles are explained by the *Shulchan Aruch* (C.M. 290).

The *Rema* (*ibid.*), based on the *Teshuvos haRosh* (85:5) adds that the authority to appoint an *Apotropos* is given to "the Beis Din of the city or the *Gedolei haDor*", in other words, not to any three people who assemble as a Beis Din. The *Pischei Choshen*³ asserts (*Yerusha v'Ishus* p177) that in places where each community in a city has its own Beis Din or where there is no Beis Din, the Rav of the city is likely considered "*Gedolei haDor*" by the city's inhabitants in this regard. Either way, those making the decision must be a permanent fixture in the town so as to oversee the *Apotropos*' activities.

As stated above, an *Apotropos* is usually only appointed for young orphans. However, the *Rema* (C.M. 285:2) and *Shulchan Aruch* (*ibid.* 290:27 and 225:20) rule that a deaf-mute and imbecile have the same status as a minor in this regard. The source of this assertion is the *Rashba*, cited by the *Beis Yosef*:

A person who becomes a Shoteh – Beis Din appoints an Apotropos to oversee his estate. [We learn this] from that which is stated [by the Gemara], "We do not appoint an Apotropos for adults", implying that generally, we do appoint one. Concerning a Shoteh – it is a Mitzva to oversee his estate [as would be done for] a minor.

In other words, the Gemara's assertion that Beis Din does not appoint an *Apotropos* for adults implies that there is no actual limit to Beis Din's power to appoint one, but they do not always see fit to do so. Since it is logical to say that the situation of a *Shoteh* is similar to that of a minor, "*it is a Mitzva to oversee his estate*".

In this light, it would seem that he need not fulfill all the Halachic criteria of *Shoteh*; it should be enough that he cannot handle his affairs and may lose his money and possessions. Appointing an *Apotropos* can be considered a form of *Hashavas Aveda* to him. However, this is only true if he has been diagnosed with an illness, such as Alzheimer's disease, that genuinely affects his ability to handle his financial affairs, even though his other faculties function well, or someone who has been comatose or incapacitated for some time. Making this determination (in other words, that somebody cannot handle his financial affairs even though he is not a *Shoteh*) is up to Beis Din.

² This responsibility is given to Beis Din in their role as the "Father of Orphans".

³ R' Yaakov Yeshaya Blau zt"l (1929-2013), member of the *Bada"tz* of the Eidah Charedis and Rav of the Sanhedria-Pag"y neighborhood in Yerushalayim.

This notion can be extrapolated from *Chazal's* recommendation to appoint an *Apotropos* for a competent adult if he has been kidnaped or is being held hostage. Though he is a fully competent and conscious living adult, an *Apotropos* is necessary since he is unable to attend to his affairs at present. The same should apply in our case. If Beis Din is certain that somebody is unable to handle his financial affairs and risks losing his assets, it should appoint an *Apotropos*.

A similar conclusion was drawn by R' Kalfon Moshe haKohen⁴ (*Shu"t Sho'el v'Nishal*, Vol. 2, C.M. 7). He was asked about grandchildren who had received assets from their grandfather as a gift, however, when he died the estate was held by their father who wanted to act as their *Apotropos*. The father was very irresponsible with money and would likely cause his children to lose some of the estate.

In his response, R' haKohen quoted R' Yisrael Zitun who said that it was correct to appoint a different *Apotropos*. In fact, it was even correct to appoint an *Apotropos* over the father's own holdings! He bases this assertion on the *Ritva* (*Shu"t*, 162) cited by the *Beis Yosef* (*ibid.*). Rav Cohen then adds some striking words:

We can also learn from the aforementioned words of the Ritva that if somebody doesn't understand the estate for he is unintelligent and foolish, Beis Din should guard his estate utilizing an Apotropos, whether it is his father or somebody else. [They should do so] even if he screams that he does not want it, either due to the law as stated, or because, although we hold that no Apotropos is appointed over adults, that only applies to somebody with Da'as; a person with no Da'as is like a minor.

The idea is clear - this is not a Halacha specific to a *Shoteh*. Beis Din has the responsibility to look after the estate of a person who cannot do so himself.⁵

Turning to an important aspect of our topic, in most cases, dementia develops and progresses over an extended period. Usually, a close family member – such as a spouse, son, or daughter – attends to him; in other cases, it may be a close friend or neighbor. It is common for the patient to place his trust in this individual completely before the onset of dementia, and even more so after it begins. Naturally, as the disease progresses and he becomes steadily incapacitated, the person closest to him assumes more and more authority, including managing his finances. Does this person have the authority of an *Apotropos*?

The Mishna in *Gittin* states (52a):

Orphans who depend on the "Ba'al haBayis", or if their father appointed an Apotropos for them, he is obligated to tithe their produce.

⁴ R' Kalfon Moshe haKohen (1874-1950), Chief Rabbi of Djerba and author of numerous *Sefarim*, including the 9-volume *Shu"t Sho'el v'Nishal*.

⁵ See, however, the *Chochmas Shlomo*, C.M. 235:20. His intent requires further study.

The Mishna's basic *Chiddush* is that an *Apotropos* can tithe the produce of the orphans. However, the Gemara relates that Rav Nachman inferred an additional *Chiddush*. The *Ba'al haBayis* mentioned at the start of the Mishna has the status of an *Apotropos*, even though he was not appointed by the Beis Din, because the orphans depend on him. (He can even sell their estate.)

In our case, there would seem to be an additional reason to consider the spouse or close family member of a dementia patient to be an *Apotropos*. In the *Sugya* in *Gittin*, the *Rishonim* discuss the age of the orphans who depend on the *Ba'al haBayis*. According to some *Rishonim*, the *Ba'al haBayis* can only be considered the de facto *Apotropos* of the orphans if they had some degree of *Da'as* (see the *Rosh ibid.* 5:6 and *Tur* and *Beis Yosef* 290). In our case, the Alzheimer's patient began relying upon this other individual while he was an adult and entirely in command of his intellect. Therefore, though he did not appoint them explicitly, they do assume the status of *Apotropos*.

This is true in the case of progressive dementia. However, in other cases it may not be so clear. If the father has a sudden stroke, after which his ability to function is completely impaired, and he moves in with one of his sons who assumes the management of his entire daily routine, decisions regarding his care, and slowly begins managing his financial affairs, there is nothing akin to an appointment as *Apotropos*. Though the father certainly wants to live with the son, he does not appear to have even the implicit ability to appoint him as *Apotropos* since he is now a *Shoteh*.

If so, this would be subject to the aforementioned *Machlokes Rishonim* as to whether the "orphans who depend on a *Ba'al haBayis*" mentioned by the Mishna in *Gittin* have any *Da'as* whatsoever. The *Rosh* cites the *Ramah* who says that if they have no *Da'as* the *Ba'al haBayis* does not become their *Apotropos* – their dependence does not automatically accord him this status. However, it is unclear whether the *Rosh* disagrees with this point or not. The *Tur* (290) and *Korban Nesanel* hold that the *Rosh* does disagree, but the *Beis Yosef* holds that he does not.

The *Pischei Teshuva* (*ibid.* 5) cites the *Chacham Tzvi* who asserts that the *Ramah* only holds that simply depending on somebody does not grant them the status of *Apotropos* if that person is not the natural *Apotropos* whom Beis Din would have appointed anyway. If he would have been appointed by Beis Din, he can become the *Apotropos* automatically if the orphans depend on him, even if they have no *Da'as*.

[It seems likely that the same would apply in our case. However, one should be aware that sometimes Beis Din will determine that the person attending to the patient is definitely not the appropriate individual to serve as an *Apotropos*.⁶]

Either way, even when somebody does have the status of *Apotropos*, it is always appropriate that significant decisions are made with the advice of a *Talmid Chacham* and/or Beis Din.

⁶ [Editor's note: This may be due to obvious conflicts of interest or other indicators of potential malfeasance.]