

Special Needs Trusts and Special Needs Planning

Presented by

The Special Needs Alliance
Attorneys who concentrate their efforts in Special
Needs Planning

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What Is a Special Needs Trust?

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- ◆ The **Grantor** gives property to
- ◆ The **Trustee** who manages the property and makes distributions to
- ◆ The **Beneficiary**

What Is the Objective of a Special Needs Trust?

- ◆ **Objective:** We do not want the trust to count as a **resource** to the beneficiary and we do not want trust distributions to count as **income** for public benefits eligibility purposes

How Is a Special Needs Trust Different from Other Trusts?

- ◆ **Trust Distributions** are often restricted
- ◆ **Trust Distribution Language** that is successful differs from state to state

SNT Terms that May Differ from Other Trusts

- ◆ **Trustee:** The beneficiary cannot be the trustee
- ◆ **Control:** The beneficiary cannot have the right to compel distributions
- ◆ **Support Distributions:** In many cases, the beneficiary cannot receive distributions for support

What Will We Accomplish with a Special Needs Trust?

- ◆ The ability to shelter resources to benefit a family member with disabilities
- ◆ The ability to help the beneficiary live more comfortably and productively than is usually possible on public benefits
- ◆ To provide financial management

Types of Special Needs Trusts

- ◆ **Self Settled** - funded with the trust beneficiary's own money - inheritances, personal injury awards, earnings
- ◆ **Third Party** - funded with someone else's money (mom, dad, grandparents, siblings, etc.)

Types of Special Needs Trusts

- ◆ **Sole Benefit** - less well-known, less well understood, but possibly very important
- ◆ Funded with someone else's money (mom, dad, grandparents, siblings, etc.)
- ◆ That "someone else" also needs Medicaid - this is an exempt transfer

Self-Settled Special Needs Trusts

- ◆ **d4A** - sometimes referred to as "d4A" or "under-65 exempt trusts"
 - Statute: 42 U.S.C. Sec. 1396p(d)(4)(A)
 - Requires a pay-back
- ◆ **d4C** - similar, but managed by a non-profit organization

Self-Settled Special Needs Trusts

- ◆ **d4A** - must be funded by parent, grandparent, guardian, or court
- ◆ **d4C** - may also be funded by the individual himself or herself

Third-Party Special Needs Trusts

- ◆ Beneficiary must never have been entitled to receive the money outright
- ◆ Trust terms can be much more flexible
- ◆ No payback required
- ◆ Usually not supervised by a court

Sole Benefit Trust

- ◆ Pay-back to the State
- ◆ Payments made on an actuarially-sound basis

What Public Benefits are We Trying to Protect?

SNTs Protect Public Benefits —What Public Benefits?

- ◆ **SSI** - Supplemental Security Income - \$603 per month in 2006 - some states have state supplements that will increase the monthly benefits check
- ◆ **Medicaid** - SSI brings Medicaid automatically in some states - in other state one qualifies for Medicaid separately

SSI Basics

- ◆ **Income:** The SSI recipient's income must usually be below the Federal Benefit Rate (\$603 in 2006) - there is a \$20 disregard
- ◆ **Resources:** \$2,000 or below (individual)
- ◆ **Disability, transfer penalties passed, citizen, resident**

Qualified Medicare Beneficiaries (QMBs)

◆ **Eligibility**

- **Income:** \$817 for an individual
- **Resources:** \$4,000 for an individual
- **Benefits:** Pays Medicare Part A & Part B premiums, pays Medicare copayments & deductibles

Other Benefits

- ◆ SLMB
 - Slightly higher income than QMB, pays Medicare Part B premiums
- ◆ Food Stamps
- ◆ VA benefits
- ◆ County and State benefits
- ◆ Section 8, TANF, others

Social Security Disability

◆ **Not Means Tested**

◆ **Eligibility**

- Work history
- Disability

◆ **Benefits**

- Monthly payments--amount depends on contributions while working
- Medicare--usually 2 years 5 months after onset of disability

Social Security Disability / DAC / CDB (Disabled Adult Child, now Child Disability Benefits)

◆ **Not Means Tested**

◆ **Disability under age 22**

◆ **Eligibility - based on parent's work history**

◆ **Benefits -**

- Monthly payments--amount depends on contributions while working
- Medicare--usually 2 years after payments begin

Cases

Bob –

SSA determined Disability Date
= Age 16

SSI of \$603 until parent retires,
becomes disabled, or dies

Bob – Age 30 - Stable

- ◆ Age 30
- ◆ Receives SSI of \$603, Medicaid, and \$100 in Food Stamps
- ◆ Living in Section 8 housing; pays rent of \$200
- ◆ Therapy provided by local mental health center; medications by Medicaid
- ◆ Status: Stable

Bob – Age 40 - Changes

- ◆ Age 40
- ◆ Receives SSD / CDB of \$840 per month since dad retired - bumped off SSI and has no medical coverage
- ◆ Living in Section 8 housing; pays rent of \$300, no food stamps
- ◆ Therapy provided by local mental health center
- ◆ Status: Not stable - meds not covered

Special Needs Trust Impact

- ◆ Care manager or trustee determines whether the state has a Medicaid continuation program - how to preserve coverage, or
- ◆ Medical coverage - private pay State high risk pool until Medicare begins in 24 months
- ◆ Apply for QMB (Qualified Medicare Beneficiary benefits) or Medigap Policy

Mary –

SSA determined Disability Date
= Age 28

SSI of \$603

Mary – Age 30 - Stable

- ◆ Age 30
- ◆ Receives SSI of \$603, Medicaid, and \$100 in Food Stamps
- ◆ Living in Section 8 housing; pays rent of \$200
- ◆ Therapy provided by local mental health center; meds by Medicaid
- ◆ Status: Stable

Mary – Age 40 - Changes

- ◆ Age 40
- ◆ Mother retires, father dies
- ◆ No change in SSI, not eligible for CDB
- ◆ Status: Stable

Special Needs Trust Uses

- ◆ Care manager or trustee determines whether there is any reason not to use the PMV technique - making unlimited distributions of food and shelter
- ◆ Trust rents a \$1,000 per month apartment, pays utilities, and buys food - Mary loses \$221 per month of SSI

Glen –

SSA determined Disability Date
= Age 30

\$450 of SSD on his own work
history

Glen – Age 30 - Stable

- ◆ Age 30
- ◆ Receives \$450 of SSD and \$173 of SSI
- ◆ Receives Medicaid and \$100 in Food Stamps
- ◆ Living in Section 8 housing; rent of \$200
- ◆ Therapy provided by local mental health center; meds by Medicaid
- ◆ Status: Stable

Glen – Age 40 - Changes

- ◆ Age 40
- ◆ Father retires, mother dies - no change in benefits; not determined to be disabled under age 22
- ◆ Hears about Mary's apartment, requests the trustee make the same distributions for him
- ◆ Status: Stable but living in an unappealing setting

Special Needs Trust Impact

- ◆ Trustee cannot use the PMV technique because Glen is receiving less than \$221 in SSI
- ◆ Trustee and care manager work with Glen to buy a house where Glen can cover food, utilities, and property taxes for \$603 per month or less.

Jan –

SSA determined Disability Date
= Age 17

\$800 of SSD (CDB) on her
mother's work history

Jan – Age 30 - Stable

- ◆ Age 30
- ◆ Receives SSD / CDB of \$800 per month and receives Medicare
- ◆ Qualifies for QMB which pays Medicare premiums and deductibles
- ◆ Therapy provided by local mental health center
- ◆ Status: Stable

Jan – Age 40 - Changes

- ◆ Age 40
- ◆ Mother dies, now Jan receives \$1,200 in SSD
- ◆ Jan loses QMB - has no Medi-gap coverage
- ◆ Jan could have purchased a Medicare supplement policy during the six months immediately after Medicare started, but didn't because of QMB

Special Needs Trust Impact

- ◆ Care manager or trustee determines whether a Medicare supplement policy can be purchased now, or
- ◆ Trust will private pay non-covered medical costs

Promoting Independence

Work with a Special Needs Plan

- ◆ Profile current benefits and map out future known changes to benefits, as well as other possible changes to benefits
- ◆ Develop a plan for the future - call it a letter of intent, journal of intent, special needs plan, a future care plan, a proposed trust distributions plan - but make a plan

The Journal of Intent

- ◆ Consider -
 - Aptitudes
 - Interests
 - Needs
 - Behaviors
 - Education
 - Employment prospects
 - Housing options
 - Socialization
 - Religious affiliations
 - Medical needs
 - Trustees
 - Trustee Appointers / Advocates
 - Final arrangements

Ask Yourself:

- ◆ Who is the primary advocate for my son or daughter?
- ◆ Who will provide the necessary funds?
- ◆ Who will manage the funds?
- ◆ Where will he or she live?
- ◆ Will family and friends support my decisions?

Work with a Team

- ◆ Family members
- ◆ Future care / advocacy organization
- ◆ Financial planner or insurance agent
- ◆ Lawyer - see
www.SpecialNeedsAlliance.com
- ◆ Accountant

Avoid Crises with Advance Planning Documents

- ◆ So simple and low-tech that most people miss this step
- ◆ If the SNT beneficiary has trusted individuals in his or her life and wants to stay out of guardianship court, consider basic documents

Basic Guardianship Avoidance Documents

- ◆ Business Powers of Attorney
- ◆ Medical Power of Attorney
- ◆ Advance Directive for end-of-life care
- ◆ Declaration of Guardian in Advance of Need
- ◆ Mental Health Directives
- ◆ **Note:** Each state has different forms

Promote Independence

- ◆ Food
- ◆ Housing
- ◆ Employment
- ◆ Transportation
- ◆ Social activities

Promote Independence

- ◆ Food
 - Don't ignore the opportunity to obtain food stamps
 - Food stamps used for food may free up more funds for other needs

Promote Independence

- ◆ Housing
 - Often the most difficult piece in the puzzle
 - If there is good housing, protect it
 - If there is not good housing, commit the needed resources to finding the best possible housing arrangement
 - An SNT trustee will usually hire a care manager for this step

Promote Independence

- ◆ Employment
 - If the SNT has funds, consider a private job coach
 - Support employment options - make certain the individual can get to the job
 - A care coordinator or other assistant is often helpful in maintaining employment

Promote Independence

◆ Employment

- Monitor benefits carefully!
- Budget earnings carefully!
- Map out the changes to benefits based on earnings!
- Monitor Social Security credits to determine when SSD may begin!

Promote Independence

◆ Transportation

- In cities without public transportation, independence for someone on SSI is almost impossible without trust distributions, because the individual is immobilized
- SNTs can pay for vehicles, insurance, and transportation services

Promote Independence

◆ Social activities

- Social activities may help pave the way for improved health and more job opportunities
- SNTs can facilitate social activities and visits with families and friends

Balancing The Parent's Long-Term Care Needs

“Long Term Care” Medicaid for Mom and Dad

- ◆ Income: \$1,809 individual, \$3,618 couple (if both eligible)
- ◆ Resources:
 - \$2,000 individual, \$3,000 couple (both eligible)
 - **Many** asset exemptions; often spouses can keep \$100,000 or far more

Medicaid for Mom and Dad – or for Grandparents or Friends

- ◆ Exempt transfers
- ◆ Huge Opportunity
- ◆ Protect this option by including language in Powers of Attorney

Exempt Transfers

- ◆ **Parent Transfer** – To a child of any age who meets the definition of “disabled” – or to a **Sole Benefit Trust** for that child

Exempt Transfers

- ◆ **Family / Friend / Anyone** can transfer property to an individual under the age of 65 who is determined by SSA to be “disabled” – or to a **Sole Benefit Trust** for that individual

Sole Benefit Trust

- ◆ Pay-back to the State
- ◆ Payments made on an actuarially-sound basis

Special Needs Trust Administration

Where the rubber meets the road

Trustees

- ◆ Trustee skits – presented to NAMI in Minneapolis three years ago (in case anyone attended that seminar), but now we have different actors
- ◆ Bad trustee, unfortunate beneficiary
- ◆ Bad beneficiary, unfortunate trustee
- ◆ Collaborate beneficiary and trustee

Distributions

- ◆ Cash distributions are almost always forbidden
- ◆ No food, shelter or anything that can be converted to food or shelter
- ◆ Credit cards can sometimes provide flexibility (but trustee must be very experienced)
- ◆ In some cases, reducing benefits by judicious distributions makes sense

Buying a House

- ◆ How to title the house
- ◆ Paying for insurance, taxes, upkeep, and utilities
- ◆ Mortgages
- ◆ Institutionalization, group homes, trading up and other issues

Buying a Car

- ◆ Effect on SSI and Medicaid
- ◆ Titling the car
- ◆ Insurance coverage and finding an insurer
- ◆ Operating costs
- ◆ Monitoring vehicle use - potential problems

Other Distributions

- ◆ Newspaper, cable, internet, computers
- ◆ Travel and entertainment
- ◆ Household furniture and furnishings
- ◆ Durable medical equipment
- ◆ Case/care management
- ◆ Therapy, medications, medical care
- ◆ Income taxes
- ◆ Legal and guardianship fees

Important SSI Concept: In-Kind Support and Maintenance

- ◆ One-third reduction for living in the household of another - \$201 in 2006
 - Pay pro rata share of expenses
 - Make a lease arrangement acceptable to SSA
- ◆ PMV - Presumed Maximum Value Reduction - \$221 in 2006

Trustee's Duties

- ◆ Accounting
- ◆ No self-dealing
- ◆ Impartiality
- ◆ Delegation
- ◆ Investments

Prudent Investor Principles

- ◆ Modern Portfolio Theory
 - Risk
 - Diversification
- ◆ Review by experts
- ◆ Monitoring

Accounting Requirements

- ◆ Annual accounts must be provided to beneficiaries
- ◆ Reporting to Social Security Administration, Medicaid agency, and the court
- ◆ Benefits of full accounting

Income Taxation of Special Needs Trusts

- ◆ Self-settled trusts are usually "grantor" trusts for tax purposes - and that's good
- ◆ Third-party trusts are almost always non-grantor trusts, and may be "simple" or "complex" in any given year
- ◆ Do you need an EIN?
- ◆ Must the trust file a separate tax return?

Accounting Requirements

- ◆ Annual accounts must be provided to beneficiaries
- ◆ Reporting to Social Security Administration, Medicaid agency, and the court
- ◆ Benefits of full accounting

The End