



DISABILITY KNOWLEDGE SERIES: Special Needs Trust

Money is a problem!

In America, assistance for disabled individuals is based upon impoverishment. This means that most governmental supports and services are not available to disabled individuals unless they are very poor. Disabled individuals sometimes receive large sums of money, like inheritances or settlements, which would disqualify them for government benefits, but they do have options to enable them to benefit from the money and still be eligible for governmental benefits and programs. One of those options is called a “Special Needs Trust.” Other options include spending the money or paying it over to the government.

Susy inherits money from life insurance proceeds. Funding for her residential program and for her job placement is dependent on her eligibility for social security supplemental income (SSI) and Medical Assistance (MA), which have very low asset limits. When her parents died, Susy received \$100,000 in life insurance proceeds. This money makes her ineligible for SSI and MA and she is at risk of losing her housing, job, and healthcare. If Susy’s money is transferred to a Special Needs Trust, she will still be eligible for SSI and MA.

Timmy just received a lump-sum back-payment from the Social Security Administration of \$50,000.

Unfortunately, Timmy now has too much money to be eligible for Medical Assistance (MA). MA has an asset limit of \$3,000 for adults. Timmy relies on Medical Assistance for healthcare coverage and also for his waiver, which he needs in order to stay in his current residential placement. If Timmy’s money is moved to a Special Needs Trust, then Timmy will still be eligible for MA.

What is a Special Needs Trust?

A Special Needs Trusts (“SNTs”) is a tool for an individual who has a disability and who has money or other assets in his or her own name. It is different from a Supplemental Needs Trust because it is funded with money that is owned by an individual who has a disability. It is also different because the government has a claim on all assets of the trust after the beneficiary dies. In contrast, a Supplemental Needs Trust is usually set up by parents or grandparents as part of their estate plan.

The individual’s money may be transferred to a Special Needs Trust, where it can be used for his or her benefit without jeopardizing eligibility for government programs or services.

SNTs must be carefully drafted by an experienced attorney. In some cases, it is necessary to petition the court to

establish an SNT (especially if parents and grandparents are not available). SNTs are administered by a “Trustee.” The person for whom the trust is established is called the “Beneficiary.” The Trustee may make distributions for the benefit of the Beneficiary to meet the Beneficiary’s “supplemental needs.”

“Supplemental needs” are the needs of an individual that are not met by governmental programs, services, and supports. For example, social security benefits are meant to cover food and shelter while Medical Assistance is intended to cover healthcare needs. The money in an SNT may be used to pay for an individual’s needs in a manner that supplements these government benefits. The Trustee must take care not to make distributions that “supplant” or “take the place of” government benefits.

Why does the government have a claim?

When a disabled individual transfers money to an SNT, the government will be able to assert a claim on any assets left in the SNT after the beneficiary dies. The reason is that the government paid out benefits for the individual and it wants to get its money back. This is one reason why it is preferable to plan proactively by creating a Supplemental Needs Trust that directs a parent’s, grandparent’s, or other relative’s remaining assets to other family members, and not to the disabled individual.

Please contact Jason Schellack at the Autism Advocacy & Law Center, LLC for more information and a free initial consultation. The Autism Advocacy & Law Center, LLC serves all individuals who have a disability, their families, and the organizations that serve them.