HOW CAN A SPECIAL NEEDS TRUST BE USED FOR THE BENEFICIARY?

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The primary purpose of a special needs trust is to supplement, and in most instances not disrupt or replace, services provided to a person with disabilities through public benefits programs, while at the same time maintaining financial eligibility for those public benefits. If drafted properly, the assets contained in a special needs trust will not be considered the trust beneficiary's assets, and thus will have no effect on *resource* eligibility for either Supplemental Security Income ("SSI") or Medicaid. However, when assets are distributed from the special needs trust, it is possible that the distribution will be counted as income to the beneficiary, and thus affect *income* eligibility for SSI or Medicaid. There are certain federal standards regarding the treatment of distributions from special needs trusts, as well as state specific requirements. Due to the complexity of the rules governing financial eligibility for SSI and Medicaid, as well as other public benefits programs, trustees of special needs trusts must carefully evaluate all available options for the use of trust assets before making a distribution to or for the benefit of a trust beneficiary.

Both SSI and Medicaid have income eligibility requirements, although the thresholds for the programs differ. This article focuses solely on eligibility for SSI benefits since the financial eligibility rules for Medicaid benefits vary state to state. However, it should be noted that New Hampshire law does require distributions from a special needs trust to be evaluated under the SSI standards when determining eligibility for Medicaid. See RSA § 167:4, V.

While wages are easy to identify as "earned income" to the worker for financial eligibility purposes, determining when a distribution from a special needs trust will be counted as "unearned income" is not as clear. For instance, if the trustee of a special needs trust distributes cash directly to a beneficiary, the cash will be counted as unearned income to the beneficiary, on a dollar-for-dollar basis, reducing or eliminating SSI benefits (please note that certain exclusions from income do exist under the SSI rules, including an exclusion for $20/month of earned or unearned income). In addition, a distribution that otherwise may appear permissible could disrupt benefits if the beneficiary could convert a purchased item into cash. For instance, the purchase of a refundable airplane ticket in the beneficiary's name would be considered income to the beneficiary for SSI purposes, because the beneficiary could decline to travel and simply convert the refundable ticket into cash.

The rules become even more complicated when non-cash trust distributions are made. For instance, if a trustee buys groceries for a beneficiary or pays for the beneficiary's housing costs (i.e., rent, mortgage payments, utility expenses, etc.), these trust distributions will be considered "in-kind support and maintenance," or another form of "unearned income" to the trust beneficiary. The reasoning behind these rules is that SSI benefits are intended to provide for an individual's basic needs for support and maintenance – that is, food and shelter. It should be noted, however, that in-kind support and maintenance does not necessarily impact SSI benefits on a dollar-for-dollar basis.

There are a variety of trust distributions that supplement a beneficiary's needs without falling into the categories of cash, food or shelter. For instance, if a special needs trust pays for medical expenses or educational programs that otherwise would not be available to the beneficiary, those distributions never should interfere with SSI eligibility. Similarly, trust distributions to modify a residence in order to accommodate the beneficiary's disability or to purchase a handicap-accessible vehicle for the beneficiary's use would be permissible. A trustee also could pay for household furnishings, computers, entertainment equipment or the services of companions or caregivers for the beneficiary without disrupting public benefits, as long as the payments were made directly to a vendor, and not the trust beneficiary.

The rules concerning the treatment of trust distributions are complex and the stakes are high when essential public benefits are at issue. Therefore, before any given trust distribution is made, it is highly important for a trustee to know precisely what public benefits the beneficiary is receiving and what types of trust distributions would be treated as countable, unearned income to the trust beneficiary.

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