

Special Needs Trusts
The Arc Montgomery County

October 16, 2013

Harold W. Pskowski, Esq.
Callegary & Steedman, P.A.
www.callegarysteedman.com
(410) 576-7606

Special Needs Trusts

Why a Special Needs Trust?

- Continued Eligibility for Government Benefits
- Continuity of Care
- Asset Management for Disabled Individual
- Advocate for Disabled Individual
- Ease Transition to Adulthood

Federal and State Disability Programs

- Social Security Disability Insurance (SSDI)
 - 9.6 million recipients
- Supplemental Security Income (SSI)
 - 6.2 million disabled recipients
- Of these, 1.6 million receive both benefits

(August 2013)

Social Security Disability Insurance (SSDI)

- Eligibility and Benefit Amount Based on Work History – 1.5 to 10-year minimum
- Eligibility based on “quarters” of coverage – earn at least \$1,160 per quarter (in 2013)
- Under age 24: six quarters in last 3 years
- Age 24 to 30: ½ the quarters since age 21
- Age 31 to 62: 20 to 40 quarters, depending on age; 20 quarters within last 10 years

Social Security Disability Insurance (SSDI)

- Additional benefits for spouse and children – 50% to 80% of primary benefit
- Eligible for Medicare after two years
- Entitlement Program – no limit on income or assets
- Average worker benefit is \$1,129 (Aug. 2013), includes inflation adjustment

Social Security Disability Insurance (SSDI)

- Unmarried adult (over age 18) with disability that began before age 22 may qualify for SSDI on parent's earnings record
- Parent must be receiving Social Security (retirement or disability) or be deceased

Social Security Disability Insurance (SSDI)

Example: A worker starts collecting Social Security retirement benefits at age 62. He has a 28-year old daughter who has had cerebral palsy since birth. The daughter will start collecting a disabled "child's" benefit on her father's Social Security record as long as she is disabled.

**Supplemental Security Income
(SSI)**

- Based on poverty and disability
- Top monthly benefit in 2013 is \$710; average benefit in Aug. 2012 was \$528.25
- No benefits for spouse or children
- Applicant must be
 - U.S. Citizen
 - Qualified Refugee, or
 - Grandfathered Alien

**Supplemental Security Income
(SSI)**

- Person age 18 or older is disabled if he or she has a physical or mental condition that prevents applicant from working and is expected to last at least 12 months or result in death.
- Related Benefits when SSI-Qualified:
 - Supplemental Nutrition Assistance Program (SNAP - food stamps)
 - Usually qualify for Medical Assistance (Medicaid)

**Supplemental Security Income
(SSI)**

Income and Asset Tests:

- No more than \$2,000 in assets
- Residence, car, and household goods are excluded when applying asset test
- Benefits reduced \$1 for every \$2 of earned income, first \$65 of earnings excluded from test

Supplemental Security Income (SSI) – Income/Asset Tests

- Monthly earnings of \$1,040 (2013) will cause complete loss of disability benefits
- Unearned income (interest, dividends, gifts) reduces benefits dollar-for-dollar
- In-kind provision of food and shelter is considered unearned income
- Food stamps, scholarships, housing & energy assistance are excluded

Supplemental Security Income (SSI) – Income/Asset Test

- Most SSI disability terminations are due to too much income, not lack of disability
- Income/asset tests are applied monthly
- Recipient can be reinstated in subsequent month
- Benefits are terminated if suspended for 12 consecutive months

Planning at Age 18

- Per one respected author, young people with disabilities want:
 - A car
 - A job
 - A date on Saturday night

Special Needs Trusts

Come in three varieties:

- Self-Settled Trusts
- Third-Party Trusts
- Pooled Trusts

Self-Settled Special Needs Trusts

- Also known as “(d)(4)(A) trusts”
- Funded with disabled person’s assets
- Disabled person is only permissible beneficiary
- No payments to family members for care

Self-Settled Special Needs Trusts

- Commonly used for personal injury awards
- May also be used for gifts, inheritances
- Preapproval required by Attorney General
- Payback to state at death of beneficiary

Third-Party Special Needs Trusts

- Funded by a third party – parent or other relative or friend
- May have multiple beneficiaries, not just the disabled individual
- Distributions to disabled person must be completely discretionary
- No payback to the government

Pooled Special Needs Trusts

- Also known as “(d)(4)(C) trusts”
- Provide professional asset and distribution management
- Five pooled trusts in Maryland
- Enrollment fees and administration fees
- Provide ancillary services
- May be more cost-effective for smaller trusts

Pooled Special Needs Trusts in Maryland

- First Maryland Disability Trust
www.firstmdtrust.org
- Plan of Maryland – D.C.
www.planofmd-dc.org
- Penn-Mar Organization
www.penn-mar.org
- Arc of Northern Virginia
www.thearcofnova.org
- Shared Horizons, Inc.
www.shared-horizons.org

**What Can the Special Needs Trust
Pay For?**

- Payments for food or shelter will reduce SSI benefits
- This includes rent, mortgage payments, real estate taxes, and utilities
- Cash gifts exceeding \$20 a month will reduce SSI benefits

**What Can the Special Needs Trust
Pay For?**

- Payments That Will Not Reduce SSI:
 - Phone, cable and internet service
 - Car, including insurance, maintenance, and gas
 - Tuition, books, tutoring
 - Travel and entertainment

**What Can the Special Needs Trust
Pay For?**

- Payments That Will Not Reduce SSI:
 - Household furnishings
 - Medical equipment, medications
 - Care management (but not to family member)
 - Documented loans to beneficiary

What Lies Ahead?

- 2011 Maryland Legislation – SB 888
 - State agencies were threatening to curtail use of special needs trusts
 - Legislature and Governor affirmed the use of self-settled, third-party, and pooled trusts in Maryland and mandated regulations approving their use.

What Lies Ahead?

- 2013 Maryland Legislation – SB 332
 - DHMH continued to restrict use of SNTs; Legislature responded by directing State agencies that their SNT regulations may not be more restrictive than federal or state law
 - also broadens use of pooled trusts
- “It is the policy of the State to encourage the use of a special needs trust . . . by an individual of any age with disabilities . . .”

What Lies Ahead?

- Financial pressures in Washington, with potential changes in Social Security, SSI, and Medicaid programs
- SSDI Trust Fund will be exhausted in 2016, benefits would be cut 20%
- Special Needs Trusts will provide flexibility to address changing needs and programs

Callegary & Steedman, P.A.

These materials are provided for informational purposes only, and are not a substitute for individualized legal advice. Anyone seeking legal advice about a specific situation should seek the services of a competent attorney.
