

A Guide for Special Needs Trust Trustees

Part I Special Knowledge

Accepting an appointment as the Trustee of any Trust requires a willingness to not only act with the highest degree of fiduciary fidelity, but also to keep records, and make reports, as needed to prove your exemplary conduct. Acting as the Trustee of a Special Needs Trust requires something more. The Trustee of a Special Needs Trust is paralyzed unless they have the “Special Knowledge” of how various benefit programs view assets held in trust and the use of those funds. The objective of this guide is to break that paralysis. This brief guide deals with those matters unique to what are known as Special or Supplemental Needs Trusts. It is not intended to replace guidance on the general obligations incumbent upon the Trustee of any trust for the benefit of another.

1.01 Overview

The purpose of using a special needs trust is to improve the quality of life of a person receiving SSI and Medi-Cal (Medicaid) benefits without jeopardizing those benefits. If a beneficiary is considered to have too much in resources available for their use they may lose both their SSI and Medi-Cal benefits. If a beneficiary has too much income, their monthly SSI payments may be reduced or eliminated and their Medi-Cal share of cost can increase. As Trustee you are charged with avoiding these results. You must avoid distributions which are either considered income to the beneficiary or which are considered income to the beneficiary.

1.02 Resources

(a) Resource Limits

Only individuals with less than two thousand dollars (\$2,000), and couples with less than three thousand dollars (\$3,000), are eligible for SSI. The harshness of this restriction is reduced by excluding from those limits certain types of assets and allowing assets in the hands of a benefits recipient to be converted into exempt assets.

Some resources are countable for both SSI and Medi-Cal purposes. The most obvious of these are cash, stocks and bonds. Any balance in a bank account owned by a beneficiary also counts as an available resource. This is true even if other family member's names are on the account as co-owners. With Co-owners on an account all of an account's balance is considered the beneficiary's unless, under limited circumstances, it can be shown that the funds in the account came from the other account owners. Any real estate owned by the beneficiary, except their principal residence, is considered an available resource. Money in a retirement plan is harder to classify. If in payment status a retirement account will not account as a resource for Medi-Cal purposes – although the income being

paid does count as income to the beneficiary. Unfortunately, these accounts are ordinarily considered available resources for SSI purposes.

Sometimes it is easier to identify countable resources by looking at which resources do not count. Some advisors call these exempt assets, but calling them exempt assets can be misleading. These so called exempt assets are only exempt during the beneficiary's lifetime. After a beneficiary's death they are subject to a Medi-Cal lien requiring payback for Medi-Cal expenses. There is no required payback for SSI distributions unless the beneficiary had too much in income or countable resources during his lifetime.

○ **Non-countable Resources include:**

- **Beneficiary's Home**
- **One Car or Van of any value**
- **Furnishings and Personal Effects**
- **Burial and Life Insurance with a face value of up to \$1500**
- **Property Essential for Self Support**

All of these categories are self explanatory, except the last. Property that is used for work as an employee or in a trade business is exempt within limits. These limits are based upon the return the beneficiary is receiving from working with those items when compared to their liquidation value.

• **Plan for Achieving Self Support (PASS) Assets**

The PASS program allows SSI recipients to own assets which otherwise might disqualify them as exceeding their two thousand dollar property allowance if those assets are being used towards an occupational goal. This occupational goal can be college, vocational training or even starting a business. An SSI recipient may possess such assets as non-countable only on accepted application. To have a Plan for Achieving Self Support approved an SSI recipient must submit a form which is available online at <http://www.ssa.gov/online/ssa-545.pdf> Full details about California's PASS program can be found at: http://ca.db101.org/ca/programs/income_support/pass/faqs.htm.

1.03 Income Limits

(a) The Three Types of Income

Income for SSI and Medi-Cal benefits purposes has nothing to do with income for tax purposes. For qualification purposes income is divided into three categories 1) Earned, 2) Unearned and 3) In kind.

(1) Earned

For SSI purposes all earned income counts. For all earned income (including income from "sheltered workshops") over sixty-five dollars (\$65) SSI benefits are reduced by one dollar for every two dollars earned. If earnings are too high the SSI award (and Medi-Cal benefits if arising from that award) will be withdrawn.

(2) Unearned

Unearned income is treated more harshly than earned income. The first twenty dollars (\$20) has no effect on a beneficiary's SSI stipend. Any unearned income above that twenty dollar (\$20) allowance reduces SSI benefits on a dollar for dollar basis. In other words if a beneficiary receives unearned income of three hundred dollars, their SSI will be reduced by two hundred and eighty dollars (\$280).

Unearned income is not just interest, dividends, royalties and rents. Unearned income includes all cash, or items that can easily be converted into cash including money or property received as gifts and inheritances. Gifts and inheritances are considered to be unearned income in the month received and unless considered to be exempt assets are assets the next month subject to the two to three thousand dollar resource allowance. **Distributions from a Special Needs Trust are considered unearned income.** As a Trustee you never want to make cash distributions above \$20 in a month to the beneficiary or it will reduce their benefits on a dollar for dollar basis.

(3) In-Kind

In-Kind income causes the most concern amongst SNT Trustees. Only food and shelter are considered to be in-kind income. Within the definition of providing shelter is paying for rent, a mortgage on a property owned by the beneficiary, and utilities. In kind income reduces SSI payments up to the lesser of the value of the in-kind support given or one third of the maximum federal portion of an SSI stipend plus twenty dollars (\$20). During 2010 and 2011 the maximum reduction was \$244.67. If it cannot be determined what was the value of food and shelter received by a program beneficiary this maximum reduction was used instead.

(4) Distributions that are not Income

(a) Gifts of non-countable assets

Providing to a beneficiary anything which would be exempt in the beneficiary's hands is generally not income. For example: A beneficiary may own a home. The Special Needs Trust could buy a home and gift it to the beneficiary without affecting the beneficiary's benefits. Likewise, a beneficiary can own a car of any value without adversely affecting his or her benefits. You as Trustee could choose to purchase a car and gift it to the beneficiary. While this is true - gifts of this scale are probably not prudent and should be avoided. A better alternative might be for the Trust to own the asset and make it available to the beneficiary. California allows trusts and non-drivers (but not minors) to own cars. This big allowance is most commonly used for the purchase of household furnishings and personal effects.

(b) Things a Special Needs Trust Can Pay For Without Consequences

Professional Services

- Accounting
- Advocacy (Legal)

Uncovered Medical & Dental

- Elective Surgery
- Dental Implants
- Uncovered Dental work including anesthesia
- Eye Glasses
- Massage
- Over the Counter Medications
- Uncovered Physician Specialists
- Uncovered Private Counseling
- Uncovered Therapy(physical/Occupational or Speech
- Acupuncture/acupressure
- Uncovered Personal Assistance

Supplies

- Bottled Water / Water Service
- Gasoline and Car Maintenance

Linens & Towels

Hobby Supplies

Camera, film, memory cards, tapes, disks

Pets & Pet Supplies

Stationary, Stamps, Cards

Certain Living Expenses

Clothing

Telephone Service and equipment (landline and cell phone)

Cosmetics

Haircuts & Beauty Services

Vacation (including paying for a personal assistant to travel with the beneficiary if needed)

Transportation (automobile, motorcycle, bicycle, moped,

Gas, insurance, license fees, car repairs, & bus passes, Taxi cab Services

Auto Maintenance

Club dues (book, cd, health, service, zoo and museum memberships

Dry cleaning and laundry service

Maid Service - Housekeeping

Repair Services (for appliances, autos, bicycle, household or

Fitness equipment.

Tuition and expenses

Stuff

Appliances(TV, VCR, DVD Player, Stereo, Microwave Stove, refrigerator, washer/dryer)

Computer hardware, software, programs and internet access

Fitness Equipment

Furniture, home furnishings

Curtains, Blinds and Drapes

Nonfood grocery items (laundry soap, bleach, fabric softener
Deodorant, dish soap, hand and body soap, paper towels,
napkins, tissues, toilet paper and Home cleaning products,
personal hygiene products)

Pornography (but only if legal)

Musical Instruments

Sporting Goods

Holiday Decorations

Home Expenses

Down payment on a Home

Purchase of a Home

Certain Utility Bills (Satellite or Cable TV, and Telephone.
NOT GAS, WATER OR ELECTRICITY

Home Improvements, repairs and maintenance - not covered by
Medicaid. All tools needed for homeowner to make these
Improvements.

Home Alarm Systems and Monitoring Services

Funeral and Burial Expenses

Events

Conferences

Courses and Classes

Tickets to concerts and sporting events