

WHAT'S SO SPECIAL ABOUT SPECIAL NEEDS TRUSTS?

By Robert Prior



One area of the law that tends to generate a lot of confusion is that of special needs planning. If an individual under age 65 is disabled and that disability qualifies them for government assistance, then special needs planning may be appropriate. The purpose of a special needs trust is to enhance the disabled individual's quality of life and, in many instances, lift them out of poverty. It generally allows them to keep an inheritance or settlement from a lawsuit without losing valuable government benefits.

To benefit from special needs planning, the beneficiary must meet the Social Security Administration's definition of "disabled." "Disabled" for these purposes means an inability to engage in any substantial work due to a physical or mental impairment which can be expected to result in death or which is expected to last twelve months. For example, if an individual is injured in a car accident but is expected to return to work in six months, special needs planning is not appropriate.

The two primary government benefits in the context of special needs planning are Supplementary Security Income ("SSI") and Medicaid. SSI is a "means-tested" income maintenance program for the aged, blind, and disabled administered by the Social Security Administration. It is designed to provide food and shelter for the qualifying individual. "Means-tested"

means that in order to qualify for SSI, the disabled individual must have limited income and assets. Individuals are "income eligible" for SSI if their income falls below the federal maximum monthly SSI benefit of \$735 (in 2017). For a couple, the income limit is \$1,103 (in 2017). The value of all assets must be less than \$2,000 for an individual and less than \$3,000 for a couple. The primary purpose of the special needs trust is to set aside assets in trust that would otherwise disqualify the disabled individual from receiving SSI.

In Georgia, if an individual qualifies for SSI they automatically qualify for Medicaid. Medicaid is "means-tested" health coverage for certain individuals who are aged, blind or disabled, and is funded jointly by the state and federal governments. It does not pay cash to the disabled individual; rather, it pays medical providers for services rendered to eligible participants. For a disabled individual, medical expenses are likely to be substantial. The special needs planning is necessary to ensure that the individual is entitled to receive Medicaid.

Special needs trusts are available in two different forms: (1) Self-Settled Special Needs Trusts, and (2) Third Party Special Needs Trusts. Both types of trusts share common features in how the trusts are administered. The assets in the trust may be used for a multitude of things, as long as they are generally

not used for food or shelter. For example, trust funds could be used to purchase a television, travel, furnishings, education, and any other item not considered food or shelter.

A “self-settled” special needs trust is a trust created with assets of the disabled individual. This is typically an insurance settlement from an accident that left the individual with the disability (although it can also be assets owned by the individual before the disability arose). The key component of the self-settled SNT is that at termination of the trust or death of the beneficiary, the government must be repaid from the trust property for benefits it paid. Usually, all remaining trust assets are used for this claw back and no trust assets remain for trust beneficiaries.

A third party special needs trust is one created with assets of a person other than the assets of the disabled individual. This is typically an inheritance or gifts from parents or grandparents. Many well-meaning people leave their disabled child an inheritance and unknowingly disqualify them from receiving government assistance. Unlike self-settled trusts, any property remaining in the third party SNT at termination or death of the beneficiary does not have to be used to re-pay the government first. Rather, it can be left to the persons designated in the trust agreement.

If you or someone you love has special needs, consult with your estate planning attorney that has experience in this area to determine if a special needs trust is right for you.



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