



LITIGATION SPECIAL NEEDS TRUSTS

California and federal law authorize the management of litigation proceeds for a disabled plaintiff in a court-approved trust. These trusts are frequently referred to as a Litigation Special Needs Trust or Medi-Cal Payback Trust. These trusts have the following requirements:

- . The trust beneficiary must have a disability that substantially impairs the individual's ability to provide for his or her own care and custody, and constitutes a substantial handicap.
- . The beneficiary must be likely to have special needs that will not be met without the trust.
- . The money placed into the trust must not exceed the amount that appears reasonably necessary to meet the beneficiary's special needs.
- . The trust must remain subject to the continuing jurisdiction of the court.
- . The trust must provide that upon the death of the disabled individual, the state will be reimbursed for the cumulative Medi-Cal benefits paid on the individual's behalf from the time the trust is established.
- . Any remaining assets, after payment of the Medicaid claim, may be paid to the heirs of the disabled person.

WHEN IS A LITIGATION SPECIAL NEEDS TRUST APPROPRIATE?

The creation of a trust to hold proceeds from a law suit and protect the eligibility for benefits of a disabled person is often essential:

- . Sudden availability of lump sum litigation awards will prevent a disabled individual from qualifying for essential public benefits.
- . Once an award is received, the loss of additional Medi-Cal benefits will create a true hardship.
- . If the award is consumed in meeting medical expenses which would otherwise be payable through the Medi-Cal program, the disabled person who is unable to work will have no other source of funds to meet his or her special needs.
- . Payments from a structured settlement directly to a disabled individual may disqualify that person from Medi-Cal and other essential government benefits.

- . Holding funds in a conservatorship account may cause loss of eligibility for essential public benefits.

THE ROLE OF PUBLIC BENEFITS

SSI is federal cash assistance program based on need. A disabled person who is financially needy may qualify for Supplemental Security Income (SSI), but to do so may only be permitted a limited amount of assets or income.

Medi-Cal in California, recipients of SSI are automatically eligible for medical assistance benefits (Medi-Cal) as well. Persons with income which exceeds the allowable limit, but which is nonetheless insufficient to cover their medical expenses, ("medically needy") can still qualify for Medi-Cal, subject to a "spend-down" requirement, provided they meet the other disability and financial eligibility standards of the Medi-Cal program. Medi-Cal benefits include not only health insurance but also personal needs assistance in a community setting, durable medical goods, and long term care in a nursing home setting.

I.H.S.S.: In-Home-Support Services is a program with requirements very similar to SSI. I.H.S.S. provides basic attendant services to assist the disabled person in basic activities of daily living.

REQUIREMENTS OF A LITIGATION SPECIAL NEEDS TRUST

- . The trust must be "for the sole benefit of" a permanently and totally disabled person as defined under the SSI program; which benefits no individual or entity except the disabled person during his lifetime.
- . The trust must be established before the disabled person attains the age of 65, but may continue on past such age.
- . The trust must be managed by a trustee independent of the disabled person, and all distributions must be in the sole and absolute discretion of the trustee.

THE CHOICE OF THE TRUSTEE

- . The trustee has absolute discretion over the disbursements from the trust which is a fundamental requirement to maintain eligibility for public benefits.
- . The key to meeting the needs of the disabled beneficiary is selection of a Trustee who is responsive, understands public benefit rules, is a prudent investor, keeps perfect books and understands taxes.

COMMON QUESTIONS ABOUT A LITIGATION SPECIAL NEEDS TRUST

Can the disabled person serve as trustee?

No. While the disabled person may make their wishes known, the trust must be managed by a trustee other than the disabled person.

Can cash be given directly to the disabled person?

No. Giving the beneficiary more than \$20 in cash will reduce SSI benefits dollar for dollar. It is preferable that the trustee pay for items or services directly.

Can a trust be established later?

Yes. As long as the proceeds of the settlement or award are identifiable, the court order approving the funds may be amended to establish a Special Needs Trust.

What can the trust pay for?

Distributions should be made for items such as transportation, education, telephone, medications and treatment not paid for by Medi-Cal, attendant care not paid for by I.H.S.S., and other items to enhance the quality of life of the disabled person. It is better that distributions not be made for food or shelter, or medical care or services provided by Medi-Cal.

Should every disabled person get a special needs trust?

Absolutely not. While a trust of this sort can enhance the quality of life of the disabled person, all other options should be considered.

Must the beneficiary always remain on benefits?

No. Ideally the trust will assist the disabled person to become independent someday. The trust may be terminated, in the trustee's sole discretion, but Medi-Cal may require repayment from any remaining trust assets for services it provided while the trust was in effect.

Please contact our office to schedule an appointment
to further discuss your Special Needs Trust needs.