

Guidance for Clients Receiving Public Benefits

(Not Intended for Distribution Directly to Clients)

1. **BENEFICIARY RECEIVES SOCIAL SECURITY DISABILITY (SSDI)**:

If the *beneficiary* of the trust (the minor child) is currently receiving Social Security Disability (or otherwise has a determination of disability from the Social Security Administration) then they are eligible for a Special Needs Trust (SNT), and a SNT is likely necessary to prevent reduction of disability benefits.

Funds in a Special Needs Trust and distributions from the SNT for authorized purposes are exempt from consideration for purposes of the SSDI means test. Funds held in a Special Needs Trust are also exempt from consideration as an available resource for other public benefits (TANF/Medicaid/SNAP/CHIP). However, any distributions from the Special Needs Trust *are* considered unearned income for purposes of TANF/Medicaid/SNAP/CHIP UNLESS they are for (1) medical or social services for the trust beneficiary; or (2) made to an ABLE account established for the trust beneficiary. Accordingly, any distribution besides these exceptions, will count as Household income, and could potentially reduce or eliminate the family’s eligibility for public benefits.

In turn, funds held in an ABLE account or distributed from an ABLE account are exempt as both resources or income and will not affect any public benefits. Accordingly, clients with a SNT who may need to make expenditures and who receive public benefits should consider also using an ABLE account. (But note, that the annual deposit from a SNT to an ABLE account cannot exceed the federal gift tax limit, currently $16,000/year).

1. **ANOTHER FAMILY MEMBER RECEIVES SSDI**:

If any family member other than the beneficiary (the minor child) is receiving SSDI, that fact is irrelevant to whether the *beneficiary* is eligible to use a Special Needs Trust. Therefore, a regular minor trust should be created for the beneficiary. Authorized distributions from that trust directly to the beneficiary or to the trustee likely WILL impact “household income” for purposes of a parent’s SSDI eligibility and may reduce that benefit but should not affect a sibling’s SSDI. Accordingly, the trustee should consider minimizing such distributions to maintain their own SSDI benefit.

1. **FAMILY MEMBER IN HOUSEHOLD RECEIVES VA DISABILITY COMPENSATION**:

VA Disability Compensation is not means determinative, and therefore, the trust and any distributions therefrom should not affect VA Disability Compensation. Other types of VA benefits may be impacted, however. Clients should research those specific benefits prior to making any distributions from the trust.

1. **BENEFICIARY OR FAMILY MEMBER RECEIVES CHIP/MEDICAID/SNAP/TANF**:

Eligibility for public benefits is generally determined based on *household* income and “available resources.” Where a normal irrevocable minor-trust is created, because the trust is irrevocable, any funds that stay in the trust will NOT affect eligibility for public benefits, as those funds are not considered either an available resource or as income for these benefits.

However, if the family receives SNAP or TANF benefits, the trust fund is likely to be considered an "available resource" for the household and potentially disqualify the household from receiving those benefits if the trustee is a member of the household. A non-household member can be chosen as a trustee to avoid this. If the client chooses to have themselves or another member of the household as trustee, they need to be advised about this potential loss of public benefits.

Additionally, regardless of who the trustee is, any distributions/withdrawals from the trust may reduce benefits or disqualify a person or household entirely from receiving public benefits, as these distributions will count as household income. Any funds paid directly to the beneficiary (or to the beneficiary’s legal guardian on their behalf) or paid *for the benefit* of the beneficiary to a third-party are considered unearned income by the beneficiary/household. If these distributions would cause the household to exceed income limits for specific public benefits, those benefits are likely to be reduced or eliminated. The sole exception to this rule is trust distributions that made specifically for medical needs or “social services” (such as counseling). Trustees can make payments for these services from the trust without affecting household income.