



Navigating Through Statutes, Insurance Policies, and Regulations
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Structuring Settlement Funds for Special Needs Clients

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Settling a Lawsuit for a Disabled Client
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Settling a Lawsuit for a Disabled Client

A settlement or judgment could cause a disabled person who has public assistance to lose his or her benefits. As a result, your hard work could end up helping your client very little, or even doing more harm than good, if the award supplants rather than supplements their benefits.

A. Is your Client disabled as defined under the Social Security Act?

- a. Adult: The individual must not be able to engage in any substantial gainful activity (SGA) because of a medically-determinable physical or mental impairment(s) that is expected to result in death, or, that has lasted or is expected to last for a continuous period of at least 12 months.
- b. Minor: The individual is considered disabled for SSI purposes if he or she has a medically determinable physical or mental impairment (or combination of impairments); and the impairment(s) results in marked and severe functional limitations; and the impairment(s) has lasted (or is expected to last) for at least one year or to result in death

B. Does your client receive public assistance?

- a. Social Security, Medicaid, Section 8 Housing, and other forms of public assistance.
- b. SSI (Supplement Security Income) Social Security.
 1. There are two sets of eligibility criteria for receiving SSI:
 1. Financial criteria based on the income and resources of the child and family; and
 - a. Maximum \$2,000 in countable assets for SSI eligibility.
 - b. Maximum \$1,500 in countable assets for Medicaid. Will soon rise to \$2,000.
 2. Aged, Blind or Disabled.
 2. SSI triggers Medicaid eligibility and possibly other forms of public assistance
- c. If your client does not receive public assistance, is it likely they will in the future?

C. Why does it matter?

- a. The client could exceed the countable asset threshold and result in their benefits being lost until such time that the assets are expended.

- b. Re-applying for Medicaid could also cause further delay in your client reinstating benefits. As such, you could actually do more harm than good for your client.

D. Options:

a. Accept the settlement outright with no trust

- 1. If it is a very large settlement perhaps the individual would prefer to accept the funds and lose their benefits. Not a common scenario.
- 2. If it is a small settlement this might be an option.
- 3. If the award could be spent on certain exempt assets such as burial expenses, household items, house or a car (\$4,500 limit could apply depending on use).

b. Deposit Award into Pooled Trust (US Code Section 1396D(4)(c))

- 1. When would you consider using a Pooled Trust?
 - 1. Typically a last resort
 - 2. No one to serve as trustee
 - 3. Good for small awards
- 2. Requirements
 - 1. Fees and Costs
 - 2. Can be funded by the beneficiary
 - 3. Established by the individual, a parent, grandparent, guardian or the court
 - 4. No age requirement
 - 5. Funds pooled together by many beneficiaries
 - 6. Funds in trust could be retained by trust or paid over to Medicaid for reimbursements
 - 7. Attorney review
- 3. Pooled Trusts in Ohio
 - 1. Community Fund Management Pooled Trust
 - 2. The Disability Foundation Trust
 - 3. Ohio Pooled Trust
 - 4. Charities Pooled Trust

c. Self-Settled Special Needs Trust

- 1. A “**Special needs trust**” is a term used to describe several types of trusts that can be used to provide financial support to an adult with special needs without affecting the adult’s eligibility for Social Security, Medicaid and other government programs. Some special needs trusts

are established by state law, while the self-settled special needs trust for our purposes today was established by federal law.

2. A Self-Settled Special Needs Trust (also called a “D(4)(a) Trust”)

1. Can be used when a person who is disabled and receives or is about to receive SSI (Supplemental Security Income), Medicaid or other forms of disability related benefits or programs requiring means testing, and is about to receive financial assets that would raise his or her countable assets over the minimum threshold.
 - a. Such assets could include back-pay in social security, inheritance, insurance payout or an award from a lawsuit. Established under *U.S. Code Section 1396D(4)(a)*.

3. Statute:

1. USC Section 1396D(1):
For purposes of determining an individual’s eligibility for, or amount of, benefits under a State plan under this subchapter, subject to paragraph (4), the rules specified in paragraph (3) shall apply to a trust established by such individual.

2. USC Section 1396D(4)(a):
(4) This subsection shall not apply to any of the following trusts:

(A) A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1382c(a)(3) of this title) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter.

4. Establishing a Self-Settled SNT:

1. Established by a parent, grandparent, guardian or the court
 - a. NOT the disabled individual.
2. Individual is under age of 65 when trust is funded
3. Individual is disabled under the Social Security Act
4. Trust is irrevocable
5. Trustee has discretionary authority to make distributions
6. Trust established for the benefit of the disabled individual
7. Trust can be funded with the disabled person’s money
8. Medicaid Payback Language in the trust.
 - a. The State can recoup funds remaining in trust at death for previous Medicaid payments.
9. Special Needs Trust Established by the Court

5. Managing Client Expectation: *What can Trust Assets be used for?*

1. The Beneficiary only
2. The Trustee has broad discretion
3. Payments should be made directly to the payee and not the beneficiary
4. Personal household items, burial expenses, taxes, legal expenses, automobiles (depending on how is usage a \$4,500 allowance might apply on automobiles).
5. Entertainment
6. Education
7. Homes can be purchased but may not be wise to do so. Talk to attorney first.
8. Refrain from using money for services covered by Medicaid.
9. No food or rent

E. Minor Settlement for a disable individual

- a. Application to Settle a Minor's Claim
- b. Appointment of guardian if proceeds are \$25,000 or more
- c. Appointment of Trustee
- d. Draft Trust
- e. Hearing

F. Structured Settlements

- a. Items to consider if utilizing a structured settlement for a disabled individual
 1. Asset and income requirements
 2. Provide an income stream
 3. Cost of Living
 4. Anticipated Events
 5. Future Expenses due to disability
- b. Get Court order so payments are made directly to Trustee of SNT
- c. Payments to your IOLTA could be constructive receipt and thus counted as an asset of the disabled person upon receipt of funds.

G. Medicaid Lien

H. Disabled Family Member

- a. What if your client is not disabled, but a family member of the client is disabled and on public assistance or likely to apply for public assistance?
 1. The Settlement could cause the household income or countable asset threshold to be exceeded.

I. Verifying Benefits

- a. Are they utilizing public assistance now?
- b. Will they be applying for public assistance in the future?
- c. 5 year “look back”



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