



“Special Needs Trusts—The Basics”

By Dennis C. McAndrews, Esquire

A Special Needs Trust (SNT) must be considered in every matter where a plaintiff or other potential recipient of monies from any source is eligible (or may become eligible) for Medical Assistance (MA) and/or Supplementary Security Income (SSI).

The use of such Trusts has become so common, and the benefits to a disabled beneficiary are so substantial, that no valid reason exists to fail to consider the use of an SNT for a disabled beneficiary of substantial funds from any source (injury suit, inheritance, divorce settlement, workers compensation lump settlement). Since a disabled individual cannot possess more than approximately \$2000.00 in liquid assets to qualify for these programs, any personal injury settlement which involves a sum above the disqualification level for a person receiving MA or SSI must automatically include consideration of an SNT. Inasmuch as the development of SNTs is not an extraordinary expense (generally about \$2000.00 to \$3000.00) and the cost of the creation of the Trust can usually be funded from the Trust proceeds (rather than trial counsel's fee) there is simply no excuse to fail to carefully evaluate the use of an SNT with the client prior to, or immediately after, settlement.

The process of developing an SNT for a disabled plaintiff is simple. First, a trustee must be identified to manage the trust assets and make distributions as the special needs of the disabled individual warrant. Naturally, the trustee must be a responsible individual or a corporate fiduciary; where an incapacitated person or a minor is the disabled beneficiary of the trust, the court may require a corporate fiduciary as opposed to a private individual. Second, contingent beneficiaries must be identified who will take any proceeds remaining in the trust after the death of the disabled beneficiary. Third, the disabled individual, the family of the disabled individual, and the trustee must all be clearly informed of the uses of the trust and that the trust proceeds must be used for the disabled beneficiary, and not for general family needs. The family and trustee must also be educated as to the proper expenditures from the trust so as not to jeopardize public benefits.

Naturally, each case requires individualized treatment, and additional steps are often necessary, such as court approval of the trust. Careful consultation between the scrivener of the trust and the injury attorney is therefore critical.

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McAndrews Law Offices, P.C.

30 Cassatt Avenue
Berwyn, PA 19312
Phone: (610) 648-9300
FAX: (610) 648-0433

Wyomissing, PA ● Phone: (610) 374-9900
Harrisburg, PA ● Phone: (717) 221-1422
Scranton, PA ● Phone: (570) 969-1817