



"A Special Needs Trust—Is It Ever Too Late to Create One?"

By Dennis C. McAndrews, Esquire

A personal injury attorney recently called us in a cold sweat. A few months ago he settled a case for a physically disabled client who was on Supplemental Security Income (SSI) and Medical Assistance. The settlement was a good one under all of the circumstances, and netted the client a recovery in the low six figures. The Medical Assistance lien had been negotiated and satisfied, counsel fees and costs had been paid, and the client was satisfied with the check which came from the final settlement.

Satisfied, that is, until the disabled client learned that he was no longer eligible for SSI and Medical Assistance. He learned that he would lose approximately \$550.00 a month in government cash benefits, and that he must now purchase his own health insurance at a substantial monthly cost, especially since he would not be part of a group plan and had numerous preexisting medical conditions.

Upon learning of his disqualification for public benefits, the client called his personal injury attorney and demanded to know if anything could be done to reinstate his valuable public benefits. The client indicated that he would not have accepted the settlement if he had known of the resulting financial losses which accompanied the settlement. The client was particularly angry to have learned that he would now be required to "spend down" his settlement to the sum of \$2,000.00 before he could even reapply for these benefits. The personal injury attorney's question to us was simple – could anything be done now to rectify the problem in order to allow the client to qualify again for public assistance? Fortunately, we were able to give him a positive response.

In general, it is never too late to create a Special Needs Trust so long as the disabled individual is not over 65 years of age. By developing a Special Needs Trust for this individual, we were able to requalify him for SSI and Medical Assistance. However, delays are sometimes encountered in requalifying disabled individuals for such benefits while lawyers from the Social Security Administration or the Department of Public Welfare (the latter of whom are more expeditious) review the Trust for compliance with applicable statutes and regulations.

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

Naturally, this period of ineligibility and the inconvenience and financial loss associated with the period of ineligibility could have been avoided if a Special Needs Trust had been created at the time of the settlement of the personal injury claim. In that way, the personal injury funds would never have passed into the hands of the disabled individual, but rather would have moved directly to the trustee, with no period of ineligibility.

It is never too early to explore the benefits of a Special Needs Trust in a circumstance in which an individual with disabilities may become entitled to a sizeable sum of money, whether by injury settlement, inheritance, retroactive award of social security payments, workers' compensation settlement, or the equitable distribution of a divorce action. The benefits of such Trusts are virtually always substantial, the costs are relatively modest, and the Trusts can be established with minimal logistical challenges when created by experienced practitioner.

Fortunately, as our colleague in the personal injury bar learned, while it is almost never too late to create a Special Needs Trust, it is also never too early to plan for a Special Needs Trust when resolving a personal injury matter.

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