

Q. What are government benefits?

A. Government benefits are forms of healthcare benefits and financial assistance made available to citizens of the United States. While eligibility for certain government benefits is based upon an individual's monthly income and the value of the resources he/she owns, eligibility for other programs is based upon the number of quarters of employment during which an individual paid taxes into the Social Security system. Examples of means-tested benefits are Medicaid, Supplemental Security Income, Food Stamps and Section 8 Housing Vouchers. Examples of entitlement-based benefits are Medicare, Social Security Disability Income and Disabled Adult Children's benefits.

Q. What is Medicare?

A. Medicare is a health insurance program that pays for an eligible individual's medical costs. Similar to Social Security Disability Income ("SSDI"), Medicare is an insurance program and not a program that is provided to people based on financial need. In simplest terms, Medicare pays for acute care, hospitalization, limited skilled-nursing care, physician's visits, medications administered in hospitals, and prescription drugs under Part D.

Q. What is Medicaid?

A. Like Medicare, Medicaid provides health insurance coverage for basic medical and hospital care, as well as prescription drugs and long-term care services. In addition, and most often of critical importance to those with disabilities, Medicaid will pay for rehabilitative services, therapy (occupational and physical), and for care in either an individual's home, a group home or nursing facility. Many states also provide services through waiver programs to support individuals with disabilities out in the community. Generally speaking, one is found eligible for Medicaid upon the receipt of SSI benefits or by having limited countable resources (\$2,000 or less) and limited monthly income (less than \$794 per month).

Q. What is the Medicaid Waiver Program?

A. The primary objective of Medicaid Waiver Programs is to provide those with disabilities the opportunity to secure the healthcare they need out in the community rather than being forced to obtain such care in an institutional facility. The majority of waiver programs allow the states to disregard certain Medicaid eligibility provisions in order to deliver long-term care services in the community. For example, a waiver program may disregard the amount of income received or the assets owned by a disabled person and the disabled person's family members.

Q. What is Supplemental Security Income (otherwise known as “SSI”)?

A. SSI is a means-tested Social Security federal benefits program that provides income to certain aged, blind, and disabled people. The purpose of the SSI program is to provide certain individuals with income to be used for food and shelter. Currently in 2022, the maximum amount of SSI for an individual is \$841 a month.

Q. What is Social Security Disability Income?

A. SSDI is a benefit for people who cannot work because they have a medical condition that is expected to last at least one year or result in death. Federal law requires this very strict definition of disability. In general, to get SSDI benefits, you must meet two different earnings tests: (1) a “recent work” test based on your age at the time you became disabled; and (2) a “duration of work” test to show that you worked long enough (paid enough in social security taxes). Certain blind workers need only satisfy the “duration of work” test.

Q. What is Social Security’s definition of disability?

A. Social Security’s definition of disability is the inability to do any substantial gainful activity by reason of medically-determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. In other words, the injury must prohibit the person from performing his or her previous job or any other substantial gainful activity in the national economy.

Q. Can I become eligible for Medicare coverage after being determined to be disabled?

A. Yes you can because an SSDI beneficiary is entitled to receive health insurance coverage under the Medicare program after receiving SSDI benefits for a period of two years.

Q. What are Child Disability benefits?

A. Child disability benefits (“CDB”) are SSDI benefits that are made available to a child (minor or adult) when his/her parent(s) reach retirement age, become disabled or die. The benefit is based upon the parent’s earnings record with Social Security and is paid out as part of the parent’s Social Security benefit. In order for an adult child to access this benefit, he/she must have been determined to be disabled prior to the age of 22.

Q. Will an individual lose Medicaid coverage if the CDB benefit is greater than the SSI benefit?

A. No. Generally speaking, whenever an individual loses his/her eligibility for Medicaid due to the receipt of CDB benefits or an increase in a Social Security benefit, federal law ensures that the individual’s eligibility for Medicaid will remain in place.

Q. What is the amount of income an individual can receive per month and the total amount of resources that someone can own and still maintain his/her eligibility for SSI?

A. A person can receive up to \$782 per month in income and can own \$2,000 in countable resources and still maintain his/her eligibility for SSI.

Q. What are resources?

A. Resources are typically defined as those assets an individual or couple own and can apply, either directly or by sale or conversion, to meet basic needs of food, clothing and shelter.

Q. What are some examples of non-countable resources?

A. Non-countable resources include household goods and personal effects which include an automobile, life insurance with a cash value not exceeding \$1,500, a prepaid burial plot or a burial fund up to \$1,500, and pre-paid funeral contracts.

Q. What is an ABLE account?

A. An ABLE account is a new 529 savings account, 529A to be more precise, for disabled individuals. The disability, however, must have occurred prior to the individual's 26th birthday in order for said person to establish such an account. This type of account came to be due to the Achieving a Better Life Experience (ABLE) Act that was signed into law by President Obama on December 19, 2014.

Q. Can I open an ABLE account today?

A. Yes, accounts are available throughout the country. See: <http://www.ablenrc.org/>

Q. What are the benefits of an ABLE account?

A. There are three main benefits to ABLE accounts. First, money held in an ABLE account cannot be counted for purposes of determining an individual's eligibility for Supplemental Security Income ("SSI") or Medicaid. Second, an ABLE account can be used for qualified disability expenses which include the following: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, and funeral and burial expenses. Third, earnings on and distributions from an ABLE account for disability expenses cannot be considered the taxable income of the contributor to the account or the beneficiary of it.

Q. Are there any limitations on ABLE account?

A. Yes, there are limitations to ABLE accounts. ABLE accounts are only available to individuals who become disabled before the age of 26. In addition, the annual amount that can be contributed to an ABLE account is limited to the annual gift tax exemption, currently \$15,000, and each individual can only have one ABLE account. As a result, the total amount of money an ABLE account can currently receive from all sources is \$15,000 per year. In addition, the total value of an ABLE account cannot exceed \$100,000. This \$100,000 limitation, however, is specific to those who receive SSI benefits because the Social Security Administration (“SSA”) considers any amount over this threshold to be “available” to the beneficiary, which in turn can negatively affect the individual’s eligibility for SSI payments. If, nonetheless, the beneficiary of the ABLE account is not concerned about remaining eligible for SSI benefits, the account may accumulate aggregate contributions up to the state’s limit on qualified 529 accounts, which in Kentucky is \$350,000. In addition to the above, when the account beneficiary dies, any remaining assets in an account must first be used to reimburse Medicaid for any and all care provided to the beneficiary after the creation of the account, but shall exclude the amount paid by the beneficiary as premiums to a Medicaid buy-in program. Therefore, due to these limitations, ABLE accounts are unlikely to provide much relief for disabled individuals who receive substantial personal injury settlements or inheritances. Further, third parties, such as family members and friends, are wise to continue making gifts or planned bequests to third party special needs trusts to avoid the Medicaid-payback obligation that is required of ABLE accounts.

Q. What is a special needs trust?

A. A special needs trust is a form of a pure discretionary, spendthrift trust designed to preserve a disabled person’s eligibility for government benefits. These public benefits may include means-tested programs where eligibility is based on financial need, such as Medicaid, SSI or Food Stamps, or insurance programs where eligibility is based on criteria other than financial need, such as Medicare or Social Security Disability Income.

Q. Are there different types of special needs trusts?

A. Yes, there are different types of special needs trusts, which include both private and pooled first party special needs trusts and third party trusts.

Q. What is a first party private special needs trust?

A. The characteristics of a private special needs trust are:

- The Law is 42 USC §1396p(d)(4)(A)
- Individual trusts drafted by an attorney
- State specific
- Designed for beneficiaries under the age of 65
- No additional funds may be added to the trust after a beneficiary is 65 years old, unless through a previously established structured settlement annuity

- An individual, their parent, their grandparent, their guardian or a court may establish such a trust
- The trust agreement must grant Medicaid a first right of recovery against the trust assets upon the beneficiary's death
- The trustee must be knowledgeable enough about government benefits to protect the beneficiary's eligibility for them
- The costs associated with drafting and establishing a
- private first party special needs trusts can vary depending on the facts of the case
- Approval of the trust from Medicaid must be secured in order for the trust to be deemed a non-countable resource

Q. What is a pooled special needs trust?

A. The characteristics of pooled special needs trusts are:

- The law is 42 USC §1396p(d)(4)(C)
- Trust is administered in accordance with one master trust agreement
- The trust is administered for the benefit of individuals Nationwide
- Anyone can join a pooled trust, but Medicaid often considers joining a pooled trust after the age of 65 to be an improper transfer
- Unlike with private special needs trusts, a disabled individual may join the trust himself/herself
- Medicaid payback may be avoided by permitting the trust to keep the assets upon the death of the beneficiary
- The trustee must be knowledgeable about government benefits to properly administrator the trust
- The costs associated with joining a pooled trust are generally lower than those associated with establishing a private special needs trust
- An individual can join and establish an account with a pooled trust in a very short period of time
- The pooled trust trustee will secure the necessary government approval of an account's establishment

Q. What is a third party special needs trust?

A. The purpose of a third party special needs trust is to preserve government benefits for an individual with physical or mental disabilities. Money is provided to a trust for the benefit of a disabled individual via gift or inheritance. The trust is established to provide for the disabled person's supplemental needs. The trust must be a pure discretionary spendthrift trust that grants the trustee the authority to determine if and when a distribution is appropriate and to deny a requested distribution if such a distribution could negatively impact the beneficiary's eligibility for benefits and/or overall well-being. Third party special needs trusts can be testamentary or intervivos trusts and can be revocable or irrevocable. Also, and of great importance, Medicaid is not the primary beneficiary upon termination of the trust, rather the grantor can determine how the remaining trust assets are to be disbursed at the death of the beneficiary.

Q. What are the questions to ask when establishing a special needs trust?

A. The following questions should be asked:

- Does the client want to determine the trustee, financial manager, and the terms of trust administration?
- Does the trustee require a minimum deposit for trust services?
- Does the trustee have experience with special needs trust administration?
- What are the fees for trustee services?
- Will the trustee travel to meet with the beneficiary?
- How are disbursements requested and processed?

Q. What are some additional special needs trust considerations?

A. The primary goal of a special needs trust is to preserve an individual's means-tested government benefits. Therefore, it is important to learn if the individual has a parent, grandparent or legal guardian who can establish the trust on his or her behalf. If not, a court order must be obtained in order to establish the trust properly.

Q. What happens upon termination of the special needs trust or death of the beneficiary?

A. Any money and property left in the trust must be used to pay back Medicaid for all of the expenses paid for on behalf of the Medicaid beneficiary during the time the trust was in existence. Some states, however, take the position that Medicaid's right of recovery extends to all benefits provided during the trust beneficiary's lifetime. As a result, it is always important to speak with the state Medicaid office before advising a client about establishing a special needs trust. Generally speaking, any and all remaining money, assets and property in the trust after reimbursing Medicaid passes to the beneficiary's heirs at law.

Q. Should I establish a Special Needs Trust or ABLE account?

A. Where possible, you should establish both as an ABLE account can be used in conjunction with a special needs trust. While ABLE accounts will provide account owners greater ability to control their funds and will be far less expensive than special needs trusts, the substantial funding limitations on ABLE accounts will likely result in people needing both an ABLE account and a special needs trust. This is especially true when family and friends want to leave money to a disabled person in excess of the annual gift tax exemption (currently \$15,000).

** Information presented herein was gathered from multiple sources, including from Thomas D. Begley Jr. and Angela E. Canellos (2013). The Special Needs Trust Handbook. New York, NY: Aspen Publishers.*