

Part of a continuing series regarding what can be paid for from a special needs trust.

The most common question a special needs trust client has is, “What can the trust pay for?” Policies regarding distributions change frequently and differ state to state. What is allowable in one jurisdiction may cause a disruption of benefits in another. In general, a special needs trust is extremely flexible as to what it can and will provide. A trustee of a special needs trust generally does not pay for any good or service otherwise available through governmental benefits. Governmental benefits arguably provide for the basic needs of an individual, such as an income, housing, medical benefits, and food.

Professional trustees, in most circumstances, will not issue cash or a cash equivalent, such as a pre-paid card, due to the immediate impact on the individual’s benefits. The Trust itself is designed to supplement governmental benefits, not replace them, so needs that can be met through outside entities should be exhausted first before seeking payment from the Trust.

Depending on the terms of the trust, a trustee can pay for the basic needs of the individual under certain circumstances, especially in an emergency where the health and safety of the beneficiary are in jeopardy. Payments from the trust for the basic needs or support of the beneficiary may cause a decrease in monthly income or loss of other benefits. This situation can arise even if no money changes hands. For instance, an adult child living in his parent’s home rent free may see a one-third reduction of his SSI check as in-kind support and maintenance (ISM). A trust that owns a home can pay for all expenses related to the home, including utilities. In most states this will cause a one-third reduction of the SSI income, but the benefit to the beneficiary outweighs the loss of

income. If there are others living in the home, the trustee may have a lease agreement and receive rent to help support the home. Overall, the duty of the trustee is to act in the best interests of the beneficiary and there are circumstances where the benefits to the beneficiary outweigh the penalties. These types of distributions should be done with the professional guidance of special needs attorneys so as to minimize any potential negative impact and maximize the benefit to the beneficiary.

Generally, distributions from the trust must meet several criteria: (1) the distribution must be for the sole benefit of the beneficiary, (2) in his or her best interests, (3) otherwise unavailable from other resources and/or no other responsible party, and (4) be fiscally prudent. Most often clients will inquire about the purchase of a home and transportation. Can they be purchased by the Trust? Yes. However, it must be done in light of the considerations outlined above and the purchase of any home should not be done without professional guidance, and with court approval if the trust is supervised. If the beneficiary is a minor, the trust does not relieve a parent of their obligation to provide for the basic needs of their minor child. Even though parents are losing jobs and facing economic difficulties, the court is generally unsympathetic to requests for funds or purchases to meet basic needs of the children.

The most important practice tip is that a special needs trust is a very flexible document in which the trustee has full discretion to act in the best interests of the beneficiary. Every jurisdiction has its quirks. Even though the trusts are written pursuant to federal statutory authority, the administrative policies differ greatly between states. An experienced special needs planning attorney can help set reasonable client expectations,

which are important for the client's future relations and satisfaction with the Trustee and/or special needs trust attorney.