

# SPECIAL NEEDS TRUSTS

## DEFINITION

A Special Needs Trust, often referred to as a Supplemental Needs Trust, is a legal arrangement which allows a physically disabled, mentally disabled, or chronically ill individual to receive income without reducing their eligibility for government benefits such as Social Security, Supplemental Security Income, Medicare, or Medicaid. A Special Needs Trust provides for supplemental and extra care over and above what the government provides. Assets held in this trust will not count for the purposes of qualifying for government assistance as long as they are not used to provide food and shelter. In addition, the trust must be set up by the beneficiary's 65<sup>th</sup> birthday.

## HOW THEY WORK

### GOVERNMENT ASSISTANCE

In qualifying for government assistance programs, one's assets and income are taken into account to determine the actual need for assistance. If someone with special needs has too high an amount of income or assets, they may not qualify for needed programs such as Social Security, Supplemental Security Income, Medicare, or Medicaid. However, if these assets are in a Special Needs Trust, they will not be considered when calculating the individual's government assistance needs. Assets which originally belonged to the disabled individual that are placed into the trust may be subject to Medicaid's repayment rules, but assets provided by third parties such as parents or as part of an inheritance are not.

### NON-SUPPORT ITEMS

Income from a Special Needs Trust cannot be used towards providing support, including food and shelter. The funds in this trust will be deemed an "available resource" for government assistance calculations if it is used to provide anything but non-support items. Despite not being able to provide for food and shelter, these assets can still make a significant difference in the quality of life for a special needs individual by providing resources for:

- Annual independent check-ups
- Personal care attendant or escort
- Vehicles and transportation
- Insurance
- Rehabilitation
- Essential dietary needs
- Materials for recreation
- Vacations
- Entertainment
- Athletic training or competitions



## TRUSTEE

Another important feature of a Special Needs Trust is that it ensures funds will be used for their intended purpose. Instead of giving the money to a third party who they hope will provide for their child, parents can place the assets into a Special Needs Trust and designate a trustee to manage the funds. This trustee has sole discretion for distributions and cannot be compelled or forced to distribute funds to the beneficiary. The trustee may ask for the beneficiary's input on how funds should be spent, but the final decision must always remain with the trustee. In addition, the trustee should never distribute cash directly to the beneficiary to pay for a service or item. All purchases by the trust should be paid directly from the trust. In terms of government assistance eligibility, receiving cash is equivalent to support.

## ASSET PROTECTION

In addition to aiding in the qualification for government assistance, and ensuring that funds will be used for their intended purpose, the use of a Special Needs Trust also provides asset protection. Special needs trusts are irrevocable, and their assets cannot be seized by creditors or in the event of a lawsuit. This can help parents ensure that funds will be available to provide for their special needs child, even in the case of severe financial difficulty.

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