



Preserving SSI When Divorcing Parents Have a Child with Disabilities

Divorce is often a particularly stressful time for families. When divorcing parents have a child with disabilities, sorting through the financial issues can get complicated. [Extra care should be taken to ensure that there are no unintended financial consequences](#) and that the family is making the best use of available resources. Maintaining or applying for Supplemental Security Income (SSI) benefits for the child, which can contribute up to \$771 monthly to the family's income, may be an important consideration. But [child support](#), if not handled properly, can reduce the monthly SSI benefit. One planning option is to request a court to assign irrevocably the child support payments to a first-party special needs trust (SNT) for the benefit of the child in order to hold the funds in a manner that will not affect the child's eligibility for SSI.

For an adult child with disabilities to receive SSI, they must have under \$2,000 in assets and less than \$771 per month of income. When a minor child is residing with a parent, both the minor's and the custodial parent's income and assets are taken into consideration when determining the child's financial eligibility for SSI. Financial support for children without disabilities typically ends when a child turns 18 or completes high school; however, some states require that child support be continued indefinitely once an individual with disabilities becomes a legal adult. Child support paid by the non-custodial parent on behalf of either an adult or minor child with a disability will disrupt the child's eligibility for SSI.

As an example, if SSI is paying a child with disabilities \$771 per month, those funds can help the family pay for the child's food and shelter. If the parents divorce and the mother is granted custody, the father may become obligated to pay child support. If the child support payments are paid to the mother, the payments will reduce the child's SSI benefit, shrinking the pool of potentially available funds to support the child. On the other hand, if the court requires the father to pay the support payments into a first-party SNT (also referred to as a "(d)(4)(A)" trust) the child could receive the full benefit amount if otherwise eligible. A first-party SNT holds funds that "belong" to the beneficiary (the child), but since they are managed at the complete discretion of the trustee—in this case, the trustee could be the mom—they aren't considered income for the purposes of SSI.

There are two main categories of SNTs—first-party SNTs and third-party SNTs. It is important to emphasize that court-ordered child support payments must be irrevocably assigned to a first-party SNT in order for the support payments not to be counted as unearned income for the child's eligibility for SSI. However, if the non-custodial parent is

not required to make child support payments, they may voluntarily establish and set aside funds for the benefit of their child in a third-party SNT. By establishing a third-party trust, the non-custodial parent will have the opportunity to name who will receive any funds remaining in the trust upon their child's death. First-party SNTs are required, upon the beneficiary's death, to pay back all states which provided Medicaid benefits to the beneficiary up to the amount of Medicaid the beneficiary received prior to distributing any remaining funds to remainder beneficiaries, a requirement that doesn't apply to third-party SNTs.

If the trust money isn't needed immediately, it can accumulate in the trust without affecting the child's eligibility for benefits. Later, the SNT can supplement SSI payments in order to cover the cost of clothing, a vehicle, transportation—anything that would benefit the child. The Trustee should be mindful of how they make distributions from the trust and use the funds in a manner that does not affect the child's eligibility for benefits. For example, if disbursements are made from the trust for the child's food or shelter, then the child is charged with the receipt of income in the form of "in-kind support and maintenance." In-kind support and maintenance is counted against the child's monthly SSI benefit on a dollar-for-dollar basis, up to a ceiling which is referred to as the presumed maximum value. (This offset can be avoided in some cases with the help of an ABL account. See a previous Voice article: [ABLE Accounts and SNTs: How to Choose](#))

If a child develops disabilities after parents have divorced, or if the parents were never married, the attorney representing the custodial parent should incorporate the need for additional support (directed to a SNT, if appropriate) into the divorce decree or child support order. In addition, if child support payments are already being made to the custodial parent directly and not to a trust, in many cases, the child support order can be modified to direct these payments to a first-party SNT.

Medicaid may also be affected by child support payments, but qualification for Medicaid is more state-specific than SSI benefits. In addition, laws regarding child support and divorce are unique to each state. For these reasons, divorcing parents should consult a local special needs attorney, in addition to their family law attorney, to understand how they and their child may be affected.

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