



The Social Security Administration's Special Needs Trusts Review Process

A Supplemental Security Income (SSI) recipient is eligible to receive a monthly cash benefit when the Social Security Administration (SSA) determines that, among other eligibility criteria, the recipient's income and resources fall below certain limits. Generally, the SSA includes funds held in trust for the benefit of the recipient towards this resource limit; however, funds in certain types of special needs trusts (SNTs) are specifically excluded from consideration. The language of the trust, and how and by whom the trust is funded, controls whether the SSA considers the trust funds to be an available resource to the beneficiary. For example, the SSA excludes from consideration a trust funded with assets derived from a third party if the beneficiary cannot terminate the trust or direct how the funds are used for the beneficiary's benefit. The SSA also excludes a SNT funded with the beneficiary's own resources if it is established and funded in accordance with the requirements set forth in 42 U.S.C. §1396p(d)(4)(A) and 42 U.S.C. §1396p(d)(4)(C).

Multi-Step Review

When an individual applies for SSI at a local SSA field office, they should provide the staff with a copy of any trust created for the individual's benefit. The field office will evaluate the trust to determine whether the trust funds should be counted as a resource to the applicant. The review of trusts by the SSA is a highly technical area with which very few field office case workers are experienced. The SSA conducted an internal study of its trust review process in 2013. In April 2014, it implemented a trust centralization project which created Regional Trust Review Teams to review trusts submitted as part of SSI applications. The SSA also issued the Fact Guide for National Trust Training to provide the Regional Trust Review Teams with additional guidance regarding how to evaluate trusts properly when determining SSI eligibility. Under the 2014 procedures, trusts are still submitted to the SSA's local field offices as part of the application process. However, the local field office will make only an initial determination as to whether the trust is a countable resource. The field office will then send the trust and its initial determination to the Regional Trust Review Team, which then makes a final decision regarding whether the trust is a countable resource.

Upon receipt of the final decision from the Regional Trust Review Team, the field office then issues a notice of eligibility to the SSI applicant. If the field office issues a notice to an applicant denying SSI benefits because of excess resources that include a trust, the notice must state the section of the trust document that causes the trust to be countable and the

relevant citation from the Program Operations Manual System (POMS) that outlines the requirements related to the problematic section. The POMS, a manual for SSA employees with instructions regarding how to process claims for Social Security benefits, is available online at <https://secure.ssa.gov/apps10/>. The SSA also uses this trust review process to reevaluate trusts that were previously submitted and approved but have subsequently been amended to comply with the POMS, or are otherwise affected by a clarification or change in SSA policy.

SSA Denials Have Increased

Soon after the trust review centralization project was implemented, members of the Special Needs Alliance reported an increase in the number of notices from the SSA stating that SSI applicants and recipients were ineligible for benefits because their resources, including funds held in SNTs, exceeded the allowable limit. Although the SNTs were drafted so that the trust funds would be excluded in the determination of a beneficiary's SSI eligibility, the SSA nevertheless determined that the SNTs were not exempt. The receipt of such a denial notice can be stressful for the SSI applicant or recipient. However, a denial notice from the SSA does not necessarily spell the end of SSI eligibility for the SNT beneficiary. The SNT may be fully compliant with the POMS requirements, and the SSA may simply have misinterpreted the trust document, resulting in a mistaken determination that the SNT is countable. Providing the SSA with additional information regarding the trust may be all that an applicant needs to do in order to obtain or maintain SSI eligibility. Members of the Special Needs Alliance, or other attorneys who regularly engage in special needs planning or Social Security disability advocacy, should be familiar with the options available to appeal a SSA decision, including how to amend the SNT so that it complies with the SSA's requirements.

The SSA is still making changes to its trust review process to ensure that it accurately and consistently reviews trusts and provides clear instructions regarding its SNT policy. It has demonstrated an ongoing commitment to address problematic issues raised by its trust review process and to clarify its policy regarding SNTs as this new system is implemented.

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