When Good Fortune Means Upheaval: Careful Spend Downs Can Preserve Vital Benefits

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Medicaid and SSI (Supplemental Security Income) often provide the bedrock of economic security for individuals with disabilities. But these needs-based programs require that recipients have no more than $2,000 in "countable resources-$3,000 for a married couple – meaning that receiving an inheritance, personal injury settlement or other lump sum can quickly jeopardize eligibility. (In states where Medicaid eligibility for health care has been broadened under the Affordable Care Act, only eligibility for Medicaid waiver services is subject to the $2,000/$3,000 limit.)

Often, the best course is to channel such funds into a special needs trust (SNT) so that the money can be used to enhance quality of life, but won't disqualify the beneficiary for public programs. In other cases, though, it may be preferable to develop a "spend down" strategy that minimizes –or avoids entirely—the period during which a person must forego government benefits.

Individual situations should be analyzed carefully but, in general, there are two cases in which a spend down may be preferable to creating an SNT: when the lump sum is relatively modest, making it impractical to incur the cost of establishing and administering a trust, or when there are large-ticket purchases that can quickly exhaust "excess funds."

Exempt Assets and Spend Down Candidates

It's important to understand which assets SSI and Medicaid consider when assessing an individual's eligibility. "Countable assets" include bank accounts, stocks, bonds, CDs, real estate other than a primary residence, and additional motor vehicles, if more than one is owned. In most cases, household furnishings and certain burial arrangements are not considered in the evaluation. Since this varies by state, families should consult an experienced special needs attorney.

So you've done the math and have determined that a spend down is necessary. What expenditures qualify? They should be solely for the person with special needs, and one of the most common misconceptions is that purchases or cash gifts for a third party are valid options. On the contrary, they will result in an interruption of benefits. Examples of appropriate financial outlays include paying off a mortgage, home renovations, education, entertainment and vacations, attorney fees, taxes, clothing. There are many more.

Scheduling Purchases

Timing is important, so it pays to have a spend down plan in place before that lump sum arrives. In most states, if the spend down is completed within the same month in which the funds are received, eligibility for benefits will continue uninterrupted. Be aware, however, that it's likely that some portion (or all) of any SSI benefits received during that month will have to be repaid to the government. Also recognize that *same month* does not mean that you have 30 days to complete transactions. For instance, if a lump sum is received on January 25th, the spend down would need to be complete before February 1 in order to avoid a lapse in benefits. That means that any checks used to pay for goods and services should have cleared the individual's bank account before February 1.

Reporting Requirements

Documentation is important. Ensure that the beneficiary's name is on the title of relevant vehicles or real estate. Keep all receipts, as well as bank statements that indicate balances on the last day of the month in which the lump sum was received, as well as the first day of the following month, in order to prove that the spend down is complete. Social Security requires that spend downs be reported by the 10th of the month following the month during which the lump sum is received. State Medicaid agencies may have even earlier due dates.

Spend downs are complicated and shouldn't be undertaken before considering possible consequences. Is it in the individual's best interest to use these newly acquired funds now, or should they be protected in an SNT in order to cover future needs? In some cases, the long-term benefits derived from immediate purchases will more than compensate for a short-term loss of government benefits.

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