

ABLE ACCOUNTS AND SPECIAL NEEDS FINANCING

CHATTANOOGA AUTISM CONFERENCE

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(we are lawyers, after all)

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WHAT ARE ABLE ACCOUNTS?

- **Achieving a Better Life Experience Act of 2014: New Code sec. 529A**
- **Created special accounts for disabled persons with Federal Income tax advantages similar to a college savings 529 plan, while protecting eligibility for SSI and Medicaid/TennCare;**
- **In general:**
 - **Contributions are after-tax, and are not income to the beneficiary;**
 - **Any income or growth within the account is tax free;**
 - **Withdrawals are tax free if used for “qualified expenses;”**
 - **If funds are not used for qualified expenses, there is a 10% penalty on the amount of the withdrawal, plus growth is subject to capital gains income tax;**
 - **Withdrawals are not counted as income or resources for SSI and Medicaid purposes, with certain exceptions.**

ABLE ACCOUNTS: WHO AND WHY

- **Who:** Anyone who cares about, or desires to help or provide for, a person with a disability;
- **WHY:** Provide financial assistance to someone who will need Medicaid and/or SSI public benefits assistance (the funds would otherwise be countable income and resources);
- **WHY:** Enable disabled persons to live above the poverty level, with limits, and with a significant personal safety-net, and in a way that allows for significant self-determination where appropriate.

WHAT ARE ABLE ACCOUNTS?

- **Requirements:**
 - **Owner/Beneficiary must have a disability before age 26;**
 - **Disability = qualify for SSI/SSDI disability benefits (some exceptions);**
 - **Annual contributions are capped at \$15,000 per beneficiary (not donor), PLUS up to \$12,140 of Owner/Beneficiary wages or earnings;**
 - **Overall account value cannot exceed \$350,000 in TN or \$462,000 in GA, after which no additional contributions are allowed (can grow, though);**
 - **SSI disregards account value up to \$100,000. Any amount over \$100,000 is counted as a resource;**
 - **Special rules for requalifying for SSI when ineligibility is due to ABLE account only;**
 - **HOWEVER, Medicaid/TennCare eligibility continue so long as beneficiary otherwise qualifies for SSI--that is, the ABLE account is the ONLY reason and resource making him or her ineligible for SSI.**

WHAT ARE ABLE ACCOUNTS?

- **Account Owner = Disabled Individual and sole beneficiary**
- **Authorized Individual/Agent = third party who has no ownership interest in the account, but has authority to establish, maintain, make withdrawals from, and terminate the account (e.g. Power of Atty, trustee, guardian/conservator);**
- **Minimum contribution: in Tennessee, \$25, other states vary;**
- **Each individual may only have one ABLE account;**
- **Some states have debit-card based withdrawal options (incl. GA) (TN only has check or ACH options);**
- **Some states allow non-residents to participate in their ABLE program—so you can compare and contrast the investment options in some other states; (TN and GA do not allow non-residents);**
- **ABLE accounts are subject to Medicaid recovery on the death of the owner/beneficiary.**

ABLE: "QUALIFIED DISABILITY EXPENSE"

An expense is considered a "Qualified Disability Expense" if:

- (1) You incurred the expense at a time when you were an Eligible Individual;
- (2) The expense relates to your disability; and
- (3) The expense helps you to maintain or improve your health, independence, or quality of life.

ABLE: “QUALIFIED DISABILITY EXPENSE”

Education

- Tuition for preschool through post-secondary education
- Books
- Supplies and educational materials

Housing

- Expenses for a primary residence
- Rent
- Purchase of a primary residence
- Mortgage, Taxes, Utilities

Transportation

- Expenses for transportation
- Use of mass transit
- Purchase or modification of vehicles
- Moving expenses

Employment Support

- Moving expenses
- Expenses related to obtaining and maintaining employment
- Job-related training

NOTE: SSI benefits may be affected if you use ABLE funds for rent after the month in which the funds are withdrawn

ABLE: “QUALIFIED DISABILITY EXPENSE”

Health Prevention and Wellness

- Expenses for health and wellness
- Premiums for health insurance
- Mental health, medical, vision, and dental expenses
- Habilitation and rehabilitation services
- Durable medical equipment
- Therapy
- Respite care
- Long-term services and supports
- Nutritional management
- Communication services and devices

Assistive Technology and Personal Support

- Expenses for assistive technology and personal support (e.g., a smartphone for a child with autism)

Miscellaneous Expenses

- Financial management
- Legal fees
- Expenses for oversight, monitoring
- Home improvement, modifications, maintenance, and repairs
- Funeral and burial expenses

ABLE ACCOUNTS: TRICKS AND TIPS

- ABLE funds can be used to pay for rent (so long as used in same month the money is taken out);
- ABLE distributions are a RESOURCE conversion for SSI purposes, NOT income;
- Even if used for a non-qualifying disability expense, ABLE distributions are still a RESOURCE for SSI purposes (subject to the \$2,000 limit);
- Contribution threshold of \$15,000 is increased for earned income of the owner/disabled individual, up to \$12,140 (possible total of \$27,140);
- SNT funds can be transferred into an ABLE (subject to total \$15K contribution threshold) and are NOT income for SSI purposes;
- Funds from 529 Plan can be transferred into an ABLE (subject to total \$15K contribution threshold).

ABLE ACCOUNTS: TRICKS AND TIPS

- **Even when ABLE Account exceeds \$100,000 the SSI suspension does NOT affect Medicaid eligibility:**
 - SSI goes into a special suspended status so long as it is only the ABLE account that exceeds the \$2,000 threshold;
 - Remain Medicaid eligible even if SSI is suspended for more than 12 months;
 - Do NOT have to re-apply for SSI/eligibility: its indefinite;
 - Must otherwise be eligible to receive SSI under all other non-ABLE criteria;
- **Third Party contributions into an ABLE can still be transfers subject to the 5 year look-back for Medicaid eligibility of the Third Party.**

EXAMPLE: Elizabeth

- **SSI recipient with an ABLE account balance of \$105,000, has a checking account with \$1,500, and no other countable resources;**
 - **First, \$100,000 of the ABLE account are disregarded as a resource;**
 - **She has \$6,500 in countable resources, and is now ineligible for SSI payments;**
- **Because it is the ABLE account that exceeds the resource limit, she remains on Medicaid/TennCare; this will continue indefinitely; she is in a new special ABLE suspension status;**

EXAMPLE: Elizabeth

- **18 months later, she purchases a used car that she uses to get medical treatment and job training with \$4,500 from her ABLE account;**
 - Her checking account balance is now \$1,000 from every day living expenses;
- **She now has \$100,500 in her ABLE account, and only \$1,000 in her checking account;**
 - Total countable resources = \$1,500, she is again eligible for SSI payments;
- **Immediately reinstated to SSI payments, no new application is needed!**

EXAMPLE: Billy

- **SSI recipient with an ABLE account balance of \$105,000, and checking account with \$3,500, no other countable resources;**
 - **First \$100,000 of the ABLE account are disregarded as a resource;**
 - **He has \$8,500 in total countable resources;**
 - **Because his non-ABLE resources exceed the SSI limit, his SSI is suspended, as well as his Medicaid/TennCare benefits;**
- **He has 12 months to spend down the resources, or his SSI will be terminated, and he will have to file a new application for SSI, and be fully approved again.**

EXAMPLE: Randy

- Randy is an SSI recipient with an ABLE account balance of \$50,000, and a checking account with \$1,500, no other countable resources;
- Randy rents an apartment for \$1,000 per month, the rent is due the 1st day of every month;
- On May 15, Randy withdraws \$1,000 from his ABLE account to pay for his June rent, and puts it into his regular checking account, which then has a balance of \$2,500.
- Randy pays the rent on June 5 (he kinda forgot);
- ABLE resource conversion for rent is only disregarded in the same month; beginning with the following month, it is a countable resource;
- Technically, on June 1, he had excess resources, and could be suspended from SSI with no Medicaid/TennCare;
- If he pays the rent on May 31, Randy is in the clear; Rent is a QDE.

ABLE ACCOUNT PROS and CONS

PROS

- Contributions are not income for SSI purposes
- Growth is Tax Free: makes most of every dollar contributed
- Low cost to establish (no atty fees)
- Clear government approval
- Maximizes every dollar when only able to contribute limited amounts
- Allows for payment of rent (in same month) and HH expenses
- Functionally extends SSI resource limit
- Can be used with supported decision making: beneficiary is the owner

CONS

- Not available if disabled after age 26
- Contribution limit of \$15,000/year (unless owner has wages)
- Limited investment options—controlled by the State program
- Withdrawal options may be limited
- Tax penalty for withdrawal for non-qualified expenses (10%)
- Max account size could be limiting for (can achieve max account size in about 16-17 years of investing the max amount)
- Tax savings depends on growth rate (lower growth rate, lower tax savings)

Special Needs Trusts

- **A tool to allow disabled SSI/Medicaid recipients to benefit from resources and gifts that would otherwise make them ineligible for benefits;**
- **Formally established irrevocable trust with a trustee managing the funds and distributions of the trust;**
- **Can be used to pay for a wide variety of things Medicaid does not pay for, and which do not include basic room and board.**

Special Needs Trusts: Two Basic Kinds

“Self Settled”

- Established with Funds belonging to disabled individual
 - Includes legal settlements paid to the beneficiary
- Subject to Medicaid recovery upon death

“Third Party Settled”

- Established using Funds supplied from third parties
- NOT subject to Medicaid recovery upon death

Special Needs Trusts: Qualified Expenses

- A home, including adjacent land, if the beneficiary lives there or intends to return to it;
- Health and dental treatment and equipment for which there are not funds otherwise available;
- Rehabilitative expenses and occupational therapy services;
- Medical and diagnostic treatment beyond Medicaid benefits, even though not medically necessary or lifesaving;
- Medical insurance premiums;
- Supplemental nursing care;
- Supplemental dietary needs;
- Eyeglasses;
- Companionship; Expenses associated with bringing relatives or friends to visit with the beneficiary;
- Private case management;
- Travel; Entertainment; Cultural Experiences; Movies
- Vacations; Electronic devices, musical instruments
- Phone, Computer, Internet, Cable
- Training and education programs;
- Caretaker Expenses;
- Purchase of furniture for the beneficiary;
- Purchase of an vehicle; adapting vehicle for the needs of the beneficiary
- Renovations to a house to adapt to the needs of the beneficiary;
- Reading and educational materials; and
- A burial plot and pre-paid burial expenses.

Governmental Benefits v. Special Needs Trust

Government Benefits

SSI/Medicaid

- Medical Care
- Room and Board
- Basic Personal Needs
- Care and Supervision
- Employment/Activities

SPECIAL NEEDS TRUST

- Medical/Dental not provided by Medicaid
- Basic care of governmental benefits are cut back
- Personal Hygiene and Grooming
- Gifts and Special Occasions
- Vacations and Trips
- Professional Fees

Special Needs Trusts: Pros vs Cons

Pros

- Unlimited contributions, not counted as income for SSI
- Not counted as resource for SSI
- Unlimited account value
- Unlimited investment options
- Contingent beneficiary flexibility
- Functionally extends SSI/Medicaid/Tenncare resource limit
- Third party established SNT's not subject to Medicaid recovery

Cons

- Limited on what can be used for;
- Cost to set up: legal fees—requires specialized language
- Some are subject to Medicaid recovery
- Income and capital gains are taxed as a trust at unfavorable rates

ABLE vs SPECIAL NEEDS TRUST

ABLE

- Contributions limited to \$15k/year (plus \$12,140 of owner wages)
- Tax Free Income and Growth
- “Free” set up
- Limited investment options
- Can be used for rent
- Optional Supported Decision Making, or Owner-controlled

SPECIAL NEEDS TRUST

- Unlimited contributions
- Income and growth taxed
- Must be set up with an attorney
- Unlimited investment options
- Only be used for non-room and board
- Requires third-party trustee control

ABLE Accounts: Beyond Special Needs Trusts

- **Trusts allow individuals with disabilities or families to set aside funds for an individual with a disability without impacting eligibility for Medicaid;**
- **Not all people can afford the cost of setting up and maintaining a Supplemental Needs Trust;**
- **SNT's do not allow for purchase of anything that Medicaid paid for (hence "supplemental");**
- **SNT's have limited utility for those who really need more of what Medicaid pays for.**

ABLE and SUPPORTED DECISION MAKING

- The disabled beneficiary is the ABLE account owner;
- ABLE account can be set up by the Owner, or by and Authorized Individual;
- Account management can be supported by a formal agreement or understanding between the Owner and the Authorized Individual about the decision making process and spending thresholds;
- Georgia and other states have debit card withdrawal options with pre-determined monthly load amounts, which would allow for a certain level of independence while limiting risk to the entire account or for non-QDE's.

QUESTIONS?

THANK YOU!

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