

Special Needs Planning: Benefits, Trusts, STABLE Accounts, Guardianships

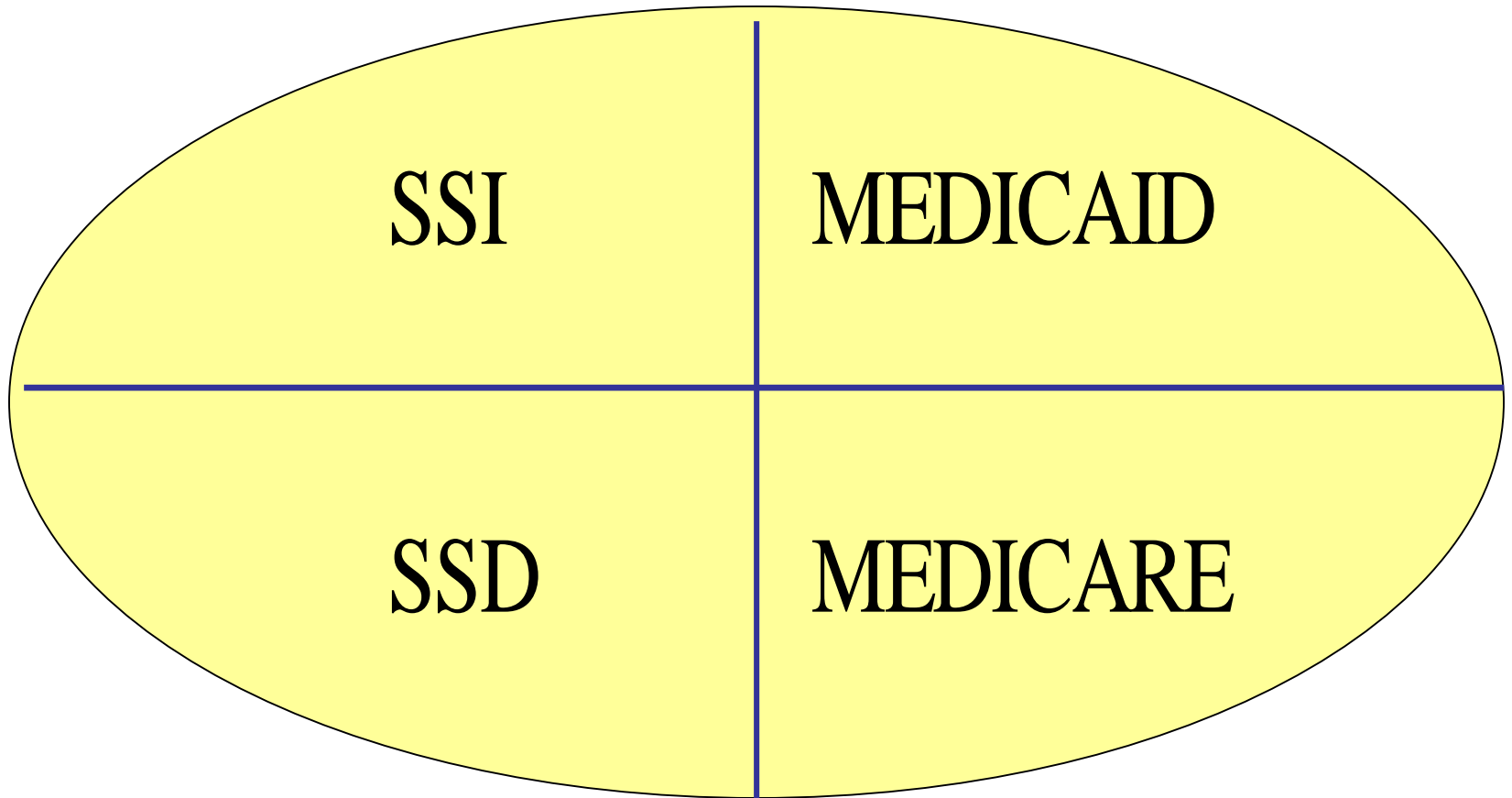


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WHAT BENEFITS ARE INVOLVED?

- SSI/SSD/SS
- Medicaid/Medicare/Private insurance
- TANF/Food stamps
- HUD subsidized housing
- VERIFY!

BENEFITS



SOCIAL SECURITY DISABILITY/MEDICARE

- These are not need-based benefits
- Receipt of funds will not affect these benefits
- Determine if other need-based benefits may be needed in the future

SUPPLEMENTAL SECURITY INCOME/MEDICAID

- These are need-based benefits which look at resources and income
- Countable resources < \$2,000 Medicaid, < \$2,000 for SSI
- Income levels
- Deeming

EXEMPT RESOURCES

- Household goods
- Residence
- Vehicle
- Irrevocable funeral contract
- Life insurance w/ total face value \leq \$2000
- Exempt trusts

TYPICAL TIMELINE FOR CHILD WITH A DISABILITY

- Birth – 18
- Minimal benefits unless low income family or child on Medicaid waiver program

TYPICAL TIMELINE – AGE 18

- Parents' income & assets no longer deem to child
- SSI and Medicaid eligibility if meet income and resource requirements
- If working even part-time, may begin receiving SSD on own earnings

TYPICAL TIMELINE – ADULT

- If child disabled prior to age 22:
- When parent retires or is disabled
 - Child eligible for DAC benefits
 - Child receives $\frac{1}{2}$ of parent's benefit
- When parent dies
 - Child receives $\frac{3}{4}$ of parent's benefit
- Medicare eligibility

VALUE OF BENEFITS

- SSI - \$841/month
- Medicaid
 - medical/hospital care
 - prescriptions
 - basic dental/vision
 - residential/institutional
- HCBS “Waiver” - up to \$14,000 per month

TYPES OF TRUSTS

- Two broad types of non-countable trusts, distinguished by who owned the assets funding the trust
 - Third-party discretionary trust
 - Self-settled special needs trust (d4A)
- Self-settled trusts must have Medicaid payback provision
- For the most part, administration issues are the same for both

THIRD PARTY TRUSTS

- Ohio Medicaid Trust statute – O.R.C. 5163.21 is much more restrictive than SSI requirements
- Funded with assets which never belonged to the disabled beneficiary
- Available as resource if trustee may spend for medical care, care, comfort, maintenance, health, welfare, or general well-being

SELF-SETTLED TRUSTS

- 42 U.S.C. 1396p(d)(4)
- Used for funds which disabled person owns
 - Inheritance
 - Litigation proceeds
 - Child support in *Castle* cases
 - Improperly drafted 3rd party trust

MEDICAID PAYBACK TRUST

- Established by
 - individual
 - parent
 - grandparent
 - guardian
 - court
- Beneficiary - disabled, under 65
- Payback provision

TERMS OF THE MPT

- Sole benefit of the disabled individual
- Can be revocable or irrevocable for Medicaid purposes
- Broad discretion
- Payback provision should not be state specific

The ABLE Act

- Like a 529
- Medicaid Payback
- \$16,000 annual contribution limit
- SSA and ODJFS Oversight
 - Notice of large or questionable distributions
 - Documentation of purpose of distributions
- Tax issues

Simple Case Study

- Mom & Dad have two kids, one with a disability
 - Trust beneficiaries are:
 - Non-disabled child
 - SNT fbo disabled child
 - Insurance beneficiaries are:
 - Non-disabled child
 - SNT fbo disabled child
 - Etc...

Guardianship Terminology

- Depends on your state
- Guardian
- Conservator
- Incompetent
- Ward

Rights Which May Be Affected

- Determine residence
- Consent to medical treatment and make end-of-life decisions
- Have a driver's license
- Own, manage or sell property
- Own or possess a firearm
- Enter into contracts or file a lawsuit
- Marry
- Vote

Procedure

- File petition with court where person lives
- Include medical affidavit or evaluation
- Court will appoint guardian ad litem or send out court investigator to give notice and advise of rights
- Hearing held
- Letters of authority issued

Duties of Guardian

- Makes decisions in the best interest of the ward, considering the person's wishes and preferences
- May be required to post a bond
- Request court approval when required and submit reports to the court – the court is the superior guardian

Guardian of Person

- Non-financial issues
- Medical – consent to and monitor
- Determine and monitor placement, programs and services
- Consent and release of confidential information
- End of life decisions
- File regular reports with probate court

Guardian of Estate

- Gather and protect assets
- Receive income
- Make appropriate disbursements with court approval
- File inventory and accountings with court
- File or defend lawsuits on behalf of the ward

Other Types

- Limited
 - In scope or duration
- Emergency
 - Necessary to prevent injury to the person or estate
 - Ex parte
 - 72 hours/30 day extension
- Interim
 - Replace former guardian
 - Ex parte
 - 15 day max/30 day extension

**WHEN IS A GUARDIAN
NEEDED?**

AGE 18

- Prior to age 18 parents are natural guardians
- At age 18:
 - Parents' income & assets no longer deem to child, which can allow SSI and Medicaid eligibility
 - Parents are no longer legal decision-makers for child

Requirements

- Ward incompetent in at least one important area
- Need for the guardianship
- No less intrusive method

Guardianship of Estate Necessary

- Assets over \$25,000 (Ohio law)
- Pursuing and settling personal injury case or other lawsuit
- Real Estate – purchase or sale
- Need for benefits

Alternatives For Managing Funds

- Representative Payee
- Trust
- Deposit into restricted account
- Durable power of attorney
- Banking supports

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