

Q. Suppose the beneficiary is an adult with a physical disability only. Beneficiary is otherwise intelligent, stable, well-adjusted adult, but simply cannot work due to physical disability. How does trustee assist beneficiary to use his or her trust for smaller purchases such as household goods/clothing without writing numerous checks to numerous vendors, given the fact that SSI will count gift cards as cash. Any suggestions on how to help beneficiary access her trust while still maintaining some amount of pride and dignity?

A. As I suggested during my presentation, use of a credit card issued in the name of the trust or the trustee and then used by the beneficiary for small purchases could work if the trust paid the credit card bill directly. Any purchase of food or shelter items may still be considered income in the form of in-kind support and maintenance (ISM). Your State Medicaid agency may not agree.

Q. Are corporate trustee fees considered "reasonable fees for administration" that can be paid prior to reimbursing the State?

A. Generally, yes, depending on the specific charge.

Q. Sole benefit question - \$1 million in SNT (d)(4)(A) for an 8-year old. The family (parents and two siblings) is poor. They cannot afford any trips or vacations. Can the trust pay for the entire family to go to Disney World? Or, is this a violation of the sole-benefit requirement?

What about a trust paying for beneficiary and spouse to go on vacation or beneficiary and siblings and parent?

A. We have not previously been asked this specific question. I assume that there is no specific trust provision that permits the trust to pay vacation expenses for the entire extended family. I think that would be a violation of the sole-benefit policy. I assume that the question arises out of the trustee's discretionary power related to trust disbursements and proper use of trust assets. This is less clear. We have previously stated that a trust can pay for parents to accompany a disabled child/trust beneficiary on a trip if it is necessary for them to provide supervision and attendant care. The same would apply to a spouse for a disabled spouse. We have not previously established a specific limit on the relationship and number of family members who may accompany a trust beneficiary on a trip at trust expense. We will work on establishing guidance.

Q. What if beneficiary can't drive and trust buys a car in the parent's name or buys a house occupied by several family members?

A. Let me preface this response by saying that State Medicaid policies on this issue may vary. Consult your State Medicaid agency. If the trust buys a car for the transportation of the trust beneficiary, unless prohibited by State law or in the face of evidence why it cannot be done, the car should be titled in the beneficiary's name or owned by the trust. Otherwise, the purchase could be seen as use of the trust for another individual.

If the primary purpose of purchasing a home is to provide a residence for the trust beneficiary, then allowing other family members to live there is not a problem, especially if they are providing assistance to the beneficiary. However, if any other family members are eligible for SSI, they could be charged with receipt of ISM unless they pay their pro rata share of household expenses.

Q. If a (d)(4)(C) trust provides that upon the death of the beneficiary, all assets of the trust will remain in the (d)(4)(C) trust, but provides that some portion will pass to the charity sponsor and some portion will be reallocated to the accounts of other beneficiaries, does the trust meet the requirements of a (d)(4)(C) trust?

A. The statute states that Medicaid payback is due at death from the portion of the trust not retained by the non-profit organization. It does not place any restrictions on what the non-profit organization does with those funds it retains. Therefore, our policy is that it does meet the requirement of the law.

Q. How quickly will SSA decide the undue hardship issue?

A. As quickly as possible.

Q. Will transfer of unused SSI benefits into a non-grantor trust trigger any problems?

A. The transfer of unspent SSI benefits into a third party trust will result in the part of the trust represented by those funds to be considered self-settled and subject to the statutory trust provisions. Additionally, if those funds are transferred by a representative payee to a trust, certain other requirements must be met. Please see POMS GN 00602.075.

Q. A disabled adult petitions a court to create a trust. Court order says the trust is to be established and the judge signs the trust for the court which is the settler. Okay?

A. Yes.

- Q. Isn't a guardian an agent just as one acting under a power of attorney? How do you distinguish for purposes of establishing a trust?
- A. Yes, a guardian and an agent acting under a power of attorney both have the authority to act on behalf of a specific individual within the scope of their authority. However, an agent acting under a power of attorney is appointed by a competent individual to act on his or her behalf. A guardian is an individual appointed by a court to act on behalf of a legally incompetent individual. Additionally, and most importantly, the law specifically provides that a trust established by a guardian can be an excepted SNT while it does not provide a similar provision for an agent acting under a power of attorney.
- Q. Can a "conservator" versus a "guardian" establish a trust if in that jurisdiction a conservator has authority to deal with the estate of an individual?
- A. If a conservator is equivalent to a guardian in your jurisdiction, i.e., it's just semantics, I would conclude they can establish the trust.
- Q. If a parent is custodian of an UTMA account, can the parent fund (transfer assets into) the previously established (d)(4)(A) trust with the UTMA account of the disabled minor child?
- A. Yes, if State law allows.
- Q. Do annuity payments (not from a structured settlement) disqualify a trust established before age 65 where funds are paid to a trust after age 65?
- A. It appears that if payments from an annuity, not from a structured settlement, that meet the same requirements as those from a structured settlement, i.e., the trust is not a resource to the SSI recipient and he or she has no right to anticipate, sell or transfer the annuity payments, then the payments from an annuity that are irrevocably assigned to an SNT would not be income and would not disqualify the trust. We have not yet posed this specific question to our General Counsel.
- Q. May a precautionary seed trust established for someone who, for example, is 60, but not fully funded until the beneficiary is 67, qualify as a (d)(4)(A) SNT?
- A. The trust may qualify as a (d)(4)(A) trust, but deposits after age 65 will count for SSI purposes and not meet the SNT exception.

- Q. For a (d)(4)(A) seed trust for a disabled adult, will the new provision in POMS allow an adult child of the disabled adult establish the trust, then funded by the disabled adult? If no, what are the options?
- A. No, the child of the disabled individual will not be able to establish a (d)(4)(A) trust. The POMS will not change the statutory requirement that the trust be established by a parent, grandparent, guardian or a court. One of those entities must establish the trust.
- Q. Can the (d)(4)(A) trust terminate before death if Medicaid is paid first? Or, must the trust absolutely continue until death of the beneficiary?
- A. This is a question we currently have before our General Counsel. We hope to issue a clarification when we get an answer.
- Q. What effect for SSI if a court orders child support payments from a (d)(4)(A) trust to be paid to the beneficiary's child?
- A. This is a question that we have not previously answered. On first impression, I think that if the court properly has jurisdiction over trust then an argument could be made that the trust is carrying out the beneficiary's legal duty of support and therefore it is for the beneficiary's benefit. We are confirming this with our General Counsel.
- Q. Can you have a valid "trigger trust" meaning it can be a support trust and upon filing an application for SSI it becomes an SNT with limited SNT distributions and payback?
- A. We will evaluate the terms of the trust at the time of application. If it is a valid SNT with all appropriate provisions at that time, yes, it is allowable.
- Q. How does SSA view an irrevocable third party trust where the trustee has absolute discretion whether or not to make any distributions to an SSI recipient? Is that trust a resource?
- A. If the trust is not revocable by the SSI recipient beneficiary nor can they direct use of the trust assets for their support and maintenance, the trust is not a resource.
- Q. In a (d)(4)(A) trust, if the trust provides for early termination of the trust, then the trust assets may be considered a resource of the beneficiary because they may frustrate the payback provision. Because a third party testamentary trust doesn't require a payback provision, can these trusts contain early termination language?

- A. I would say yes. However, if the beneficiary obtains control of the corpus upon revocation, it would be income and a resource thereafter.
- Q. Are there any circumstances in which a testamentary or third party SNT is a resource?
- A. It would be a resource if the SSI recipient can revoke the trust and gain access to the funds or he or she can direct the use of the trust assets for his or her support and maintenance.
- Q. Must the beneficiary establish that Medicaid will not pay for a health care service before SSA considers the disbursement is not income?
- A. If the disbursement for medical care is directly to a third party provider, it is not income for SSI purposes. Medicaid rules may be different.
- Q. Gift card – if have receipts for purchase, for example TV purchase at Walmart or Target, and no cash back permissible, what will SSA position be?
- A. If the trustee gives a gift card to the beneficiary in the exact amount of the TV purchase, it is still income to the beneficiary if the gift card can be used to purchase food or shelter or the gift card can be sold.
- Q. A 401(k) or pension plan of parent. Are these deemed to the minor disabled child?
- A. No, per 20 CFR 416.1202.
- Q. Non-assignable payments – (On page 15) These payments may generally not be paid directly into a trust, but individuals may structure trusts so that it appears they are so paid. How is that accomplished?
- A. Generally they establish a direct deposit agreement so the payment is directed into an account held by the trust. We consider such payments to be constructively received even if they bypass the individual entitled to the payment.
- Q. Court orders post-age 18 child support but the order specifically states the support is to be paid to a third party SNT, subject to the terms and provisions of said trust. Is that okay or does it have to be a payback? SSA region and our State have not objected to using a third party trust. Child's right is only to what the court says his or her right is.
- A. SSI policy on current child support payment made to an adult child is that the payments are income to the adult child. If a court orders the payment

of the support payments to a trust, we would consider support payments to the trust to be establishment of a trust with the child's assets (as defined in section 1613(e)(6)(C) of the Social Security Act). The amount of the support payments would be included in the beneficiary's resources unless the requirements of section 1917(d)(4)(A) were met for the portion of the trust considered to be self-settled.