

IS IT MALPRACTICE

TO FAIL TO PRESERVE YOUR CLIENT'S SUPPLEMENTAL SECURITY INCOME (SSI) AND MEDICAID BENEFITS BEFORE YOU OBTAIN A PERSONAL INJURY SETTLEMENT?

The parties agree to a dollar amount settlement. Everybody is very happy. But have you really done your job if you have not preserved your client's Supplemental Security Income (SSI) and Medicaid eligibility?

The use of a Qualified Structured Settlement may lessen the need for financial planning in the future, but the payments may not be enough to cover all of the medical needs, both anticipated and unplanned, that can befall a seriously injured individual. The one certainty is that the structured settlement payable to either the guardian or the individual will disqualify the injured party from SSI and Medicaid.

A more appropriate method of settling a personal injury action should involve a court approved "d(4)(a)" Special Needs Trust. This vehicle will assure the continuance of government benefits while at the same time provide professional money management. In concert with a settlement annuity, you can create the ultimate solution. The settlement annuity provides a steady stream of income with inflation and age adjustments (if payable to the Special Needs Trust it will not adversely impact benefits), and the Special Needs Trust provides the flexibility to deal with the unknowns of the real world.

The use of a professional and experienced fiduciary to manage the Special Needs Trust provides:

1. A comprehensive understanding of the injured party and his family's needs.
2. A local advisor who understands and has access to experts in benefit planning.
3. Management of the tax issues in the best interests of the injured party.
4. Financial and estate planning for the entire family.
5. Protection of the assets from "Creditors and Predators,".
6. The patient with the facility to receive treatments and comforts not normally covered by public programs.

The professional fiduciary managing your client's Special or Supplemental Needs Trust, should preliminarily answer some basic questions as part of its initial review:

1. What are the cash flow needs of the family?
2. What is the life expectancy of the injured party?
3. How will inflation and market fluctuations impact the assets, and more importantly impact the comfort level of the family?

Your client should know that a high-quality professional fiduciary will:

1. Invest for long-term growth, not what is in fashion at the moment.
2. Invest in alignment with the beneficiary's needs while maintaining the maximum tax efficiency that is consistent with the needs of that beneficiary.



3. Assist the family in property ownership issues.
4. Work with care managers to provide the highest levels of care available.
5. Provide financial guidance to the family.

Individuals with disabilities have many needs beyond basic medical care, food, clothing, and shelter. Federal law provides a means for an injured party to retain his or her proceeds from a personal injury settlement without those resources disqualifying him or her from SSI and Medicaid benefits. The answer is a "d(4)(a)" Trust. It may be the right answer for your client and may very well be the answer for you as well. ☺



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