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PROPER PLANNING MAY CREATE PEACE OF MIND



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Guardianship Assets Are Counted by SSA

I recently had the opportunity to represent a parent as Guardian of the Property of a minor child who more than one year ago received a settlement. The child was in jeopardy of losing his SSI and Medicaid benefits. My job was to establish a special needs trust so that public assistance eligibility would be maintained. What I learned in my investigation led me to a very important rule concerning availability of assets under government assistance law.

THE TALE:

The Probate Division approved a settlement for a minor child. A guardianship was established to receive the proceeds. The settlement was a combination of lump sum cash and a structure. The structure was payable to "The Guardianship of John Jones" and paid a couple of thousand dollars each month. At specified timeframes there will be large lump sum payouts. The monthly payout was deposited into the restricted account titled in the guardianship.

When the Guardian attended an annual review at the Social Security office the case-worker became aware of the large

sum in the guardianship account, and the monthly payout. SSA issued a notice terminating the SSI benefits. This information was then communicated by SSA to the Department of Children & Families and the Guardian was put on notice that Medicaid could terminate.

THE TIP:

Assets in a guardianship account are countable under the SSI and Medicaid programs notwithstanding that the minor or incapacitated person may not have direct access. Once assets in a guardianship account exceed \$2,000.00 the person will lose SSI and Medicaid benefits. If at the time of settlement the client and the attorney had sought court approval of a special needs trust and funded the trust with the proceeds, public assistance eligibility would not have been jeopardized.

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In addition, people receiving SSI or Medicaid are limited in the amount of monthly income they can receive (this figure changes each January). Because the monthly annuity payment was paid to the guardianship it was countable income and put the child over the income limit. We obtained a court order authorizing the Guardian to cre-

ate the special needs trust and directing the insurance company to change the payee to the special needs trust. The minor will once again be eligible for benefits.

ANNOUNCEMENT:

Our firm is a Business Patron of the Eagle Program of the Academy of Florida Trial Lawyers.

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