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PROPER PLANNING MAY CREATE PEACE OF MIND



Sept. 2004

## STRUCTURES & SSI DEEMING RULES

Last month's newsletter addressed SSA's treatment of structures when the plaintiff is receiving SSI benefits. This newsletter addresses the potential concerns of using structured settlements for a parent's derivative claim when the injured plaintiff is a minor receiving SSI benefits.

**TALE:** Minor child receives SSI and Medicaid assistance. Parent does not receive government assistance. Minor is injured in an accident. The minor and her mother are the plaintiffs; the parent has a derivative cause of action. The minor's lawsuit proceeds go into a special needs trust. The mother's derivative proceeds are used to buy a structured settlement annuity for the mother.

SSA denied the child SSI (and DCAF denied Medicaid) because the mother's annuity is a countable resource to the child.

**TIP:** SSI law allows a parent's income and assets to be "deemed" (i.e. counted toward) to the minor child. Therefore, if the parent's income or assets exceed the SSI limits the child will not qualify.

In the example above, the monthly

payment from the structure did not exceed the income eligibility requirement so there was no income deeming problem. The problem is that the annuity was treated as a countable resource that was valued more than \$2,000.00 (which is the asset limit). SSA takes the position that the parent can sell the annuity even if she is required to get a court order to do that. Although the annuity is non-liquid (i.e. it is not cash and cannot be converted to cash within 20 days) it is countable and therefore disqualifies the child. The fact that the owner has to go to court to sell the structure is not an impediment to SSA counting it as a resource.

Before settling the case or advising the client to purchase a structure:

1. Determine if the parent is on SSI or Medicaid assistance;
2. Determine if the child is on SSI or Medicaid;
3. Obtain structured settlement proposals but DO NOT purchase anything;
4. Refer your client to a board certified elder law attorney for a consultation.
5. DO NOT rush the process. Allow the client to obtain qualified advice about their legal options to maximize the proceeds and maintain govern-

ment benefits.

### ANNOUNCEMENTS:

**Stephanie is the Past Chair of The Florida Bar Elder Law Section**

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

### Meet The Staff

Bonnie Hale-Legal Assistant

- Special Needs Trusts
- Medicaid & SSI
- Nursing Home/ALF Resident Rights
- Estate Planning

Flo Koplo - CLA

- Guardianship
- Probate
- Trust Administration
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***“Under SSI law a parent's income and assets are deemed to a minor child. A parent with a derivative claim who receives proceeds outright or in a structure can jeopardize the child's SSI eligibility.”***