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PROPER PLANNING MAY CREATE PEACE OF MIND



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SSA UPDATE: STRUCTURES & SPECIAL NEEDS TRUSTS

There have been inconsistent rulings made by the SSA concerning the treatment of structures that pay into a special needs trust, for quite some time. Some of the rulings have determined that people receiving SSI benefits, who chose to place their personal injury proceeds into a special needs trust (in the form of a structured settlement) had income that exceeded the income limit and therefore, were no longer eligible.

While the monthly cash benefit paid under SSI barely helps the recipient to make ends meet, its most important feature is automatic entitlement to Medicaid assistance. The erroneous rulings are devastating for an SSI recipient because it forces the special needs trust to pay for everything at a private pay rate once Medicaid is terminated. Consequently, the special needs trust assets are exhausted at a faster rate than if Medicaid paid the basic medical care at the Medicaid reimbursement rate.

A letter issued by SSA, dated January 31, 2006 states that if a beneficiary of a special needs trust has no right to anticipate, sell or transfer the structure payments and the payments are

assigned to the SNT, the payments are not income to the beneficiary and the right of the trust to receive the payments is not a countable resource to the beneficiary.

The SSA letter also advises that where the trust beneficiary lives beyond 65 years of age and the structure continues to pay into the SNT, the right to receive continued payments which was irrevocably assigned to the SNT does not disqualify the trust under the exception to transfer of assets.

The letter certainly is good news. However, I suggest we proceed cautiously until SSA changes the law (C.F.R.) to reflect its new policy. More importantly, SSA needs to update the Program Operations Manual (POMS) which is used and applied by the Claims Representatives. The POMS are essentially the 'bible' followed in the local SSA offices. Until such time that the POMS have been revised the Claims Representatives may not be aware of the letter or, may question whether to apply it if they do not see the policy reflected in the POMS section that addresses annuities.

In light of the new federal Medicaid law and the lack of precedent, attorneys and

structured settlement brokers may also want to consider designating the SNT as the death beneficiary of any remaining payments to satisfy Florida's requirement that the state be designated the beneficiary on annuities.

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" ... where payments are irrevocably assigned to the SNT, the payments are not income to the beneficiary and the right of the trust to receive the payments is not a countable resource to the beneficiary."

irrevocably