

Providing the best quality of life requires informed decisions.

The best way to provide your special needs child with compassionate care and a comfortable life is to support your legal and financial decisions with reliable information and proven expertise. That's why America's finest disability attorneys have combined their talents to create the Special Needs Alliance.

As attorneys in the field of Disability and Public Benefits Law, we help to enhance your child's quality of life. Every member of the alliance has the resources and legal expertise to help you maintain public benefits for your child and develop effective estate plans that protect your assets.

This brochure is provided as a service of Special Needs Alliance and is informational only. It is not intended to serve as legal advice or replace the advice of a legal professional.



Special Needs Alliance members
are available nationwide.

To contact a member in your area, call

877-572-8472

or visit us online at

www.specialneedsalliance.org

Avoiding Legal Malpractice

by Using Special Needs Trusts



Special needs require special attorneys



When getting the money is not the end of the case.

Is it malpractice to fail to preserve Supplemental Security Income (SSI) and Medicaid eligibility before you obtain a personal injury settlement? Persons with disabilities have many needs beyond basic medical care, food, clothing and shelter. To provide for the payment of these needs, federal law permits a person with disabilities to retain his or her proceeds from a personal injury settlement in a "d(4)(A)" Special Needs Trust (SNT), without those resources disqualifying him or her from SSI or Medicaid benefits.

A d(4)(A) SNT is a trust created for the benefit of an individual with a disability under the age of 65 by the individual's parent, grandparent, legal guardian or court.

The trust must provide that the state Medicaid agency will receive amounts remaining in the trust upon the individual's death up to the amount paid under the Medicaid program for services to the individual.

Two examples:

Christina settled a personal injury case in 1991 for a lump sum upon the advice of her personal injury attorney. She later sued the attorney and guardian ad litem for malpractice. She alleged that the defendants: (1) failed to consult competent experts concerning a structured settlement, and (2) failed to plan to preserve her SSI and Medicaid eligibility.

Christina alleged that a structured settlement with a d(4)(A) SNT would have protected her personal injury settlement from dissipation, provided tax benefits and protected her SSI and Medicaid benefits. The case was settled by all defendants for a combined sum of \$4.1 million.

Edith, the conservator for James S. III "Jamie" settled a personal injury action on Jamie's behalf. As a part of the application to compromise and settle the claim, the conservator requested that the net settlement amount be placed in a d(4)(A) SNT for Jamie to preserve his Medicaid eligibility. The State of Connecticut objected.

The Supreme Court of Connecticut rejected the attorney general's argument that the conservator should spend down all of Jamie's assets and then re-apply for Medicaid assistance. The court ruled: "By contrast, with the creation of the trust, Jamie will retain his Medicaid eligibility and Edith (the conservatrix) can provide for his supplemental needs from the trust assets, while Medicaid provides for his basic medical care.

Therefore, not only is the latter course of action clearly better for Jamie, it may be fairly stated by failing to follow it, the probate court, and Edith could be deemed to be in dereliction of their duties to Jamie. This duty requires that fiduciary of an estate and, indirectly, the trial lawyer, protect the client's settlement.

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