

THIRD PARTY SUPPLEMENTAL (SPECIAL NEEDS) TRUSTS

Pursuant to Social Security Income (SSI) and Medical Assistance (MA) regulations regarding eligibility - resources that count towards qualification and/or non-qualification are defined as “things owned by the individual that could be changed to cash and used for food or shelter,” “cash or other liquid assets or any real or personal property that an individual owns and could convert to cash to be used for his or her support and maintenance,” or “if the individual has the right, authority or power to liquidate the property or his or her share of the property.” *See*, Article “*Understanding Social Security Income*,” 2023 Edition, *see also*, 20 CFR § 416.1201. Resources. Under those definitions, A Third-Party Supplemental (Special Needs) Trust should not be counted as a resource; thus, disqualifying a SSI/MA Recipient from receiving his or her government benefits. Determination of whether a trust is an available resource for SSI/MA eligibility can only be made by evaluating each trust instrument and circumstances surrounding its execution to determine the intent of the Settlor (i.e., the person creating the trust). *See*, 55 Pa. Code § 178.7(e), *see also*, *Snyder v. DPW*, 556 A.2d. 31 (Pa. Cmwlth. 1989). Generally, the treatment of trusts depends on how the trusts are funded and under what circumstances the individual who is or may be receiving government benefits has access to those funds.

For SSI/MA eligibility, a discretionary support trust will, generally, not be counted as a resource if the following is met:

- the **trust beneficiary** has no control over the trust and/or trust funds; i.e., no use of the funds for food or shelter, no authority to get or receive trust principle, no rights to income from the trust, no authority to sell or assign rights in the trust funds, no authority to revoke or terminate the trust;
- the monies to fund the trust never belong to the trust beneficiary; i.e., a third party is funding the trust; and
- disbursements are not made directly to the trust beneficiary; i.e., disbursements from the trust to a third party are not income to the trust beneficiary; disbursements that do not count as income may include those made for education, therapy, transportation, professional fees, medical services not

covered by MA, phone bills, recreation and entertainment

See, SSA POMS: S1 01120.200. Also, additions to the trust's principle made directly to the trust (e.g., by Will) are not considered income to the trust beneficiary. Id. Thus, worded carefully, a Third-Party (Special Needs) Supplemental Trust should not be counted as a resource which would disqualify a SSI/MA Recipient from continuing their eligibility for government benefits.

In addition, the funds placed in a Third-Party Supplemental (Special Needs) Trust should not be subject to MA Estate Recovery. *See*, 55 Pa. Code § 258.1 and § 258.3. The MA Estate Recovery provisions are only applicable once an individual reaches the age of 55, is still on MA and *only* if the trust funds become part of the trust beneficiary's estate. Under a Third Party Supplemental (Special Needs) Trust any remaining trust funds upon the death of the trust beneficiary should be distributed to other named heirs and/or charities. Because the trust is being funded by a third party (i.e., not by funds owned or due to the trust beneficiary), there is no requirement to have a provision of the trust stating that upon the trust beneficiary's death DHS should be reimbursed for MA benefits. Said provision is only required in Special Needs Trusts that are established with funds received by a qualifying MA individual which would otherwise disqualify the individual from receiving MA benefits. These types of Special Needs Trusts are usually set up by the MA individual (or their representatives) as a result of the individual's receipt of monies from inheritances, litigation, winnings, etc. The funds belong to the MA Recipient.