

Maintaining Eligibility for SSI and Medicaid: What can a Family Member or Special Needs Trust purchase for a Person with Disabilities, and what is a Person who is receiving SSI or Medicaid allowed to own?

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INDEX, for easy reference, to over 100 key words discussed in the article concerning specific purchases and types of property (such as: food, shelter, clothing, cars, trips, gifts, computers, furniture and pets)

- 1. CLOTHING, HOUSEHOLD GOODS, PERSONAL EFFECTS AND AUTOMOBILES – ARE THEY COUNTED AGAINST ELIGIBILITY? BASICALLY NO.** In 2005, the US Social Security Administration (SSA) issued important new regulations to simplify exclusions. For a 2008 analysis by SSA’s Office of Policy, concerning implementation of these changes, see www.socialsecurity.gov/policy/docs/policybriefs/pb2008-01.html. On February 7, 2005 in the Federal Register, the SSA summarized the rule changes in part as follows: “We are revising our regulations that explain how we determine an individual’s income and resources under the supplemental security income (SSI) program in order to achieve three program simplifications. First, we are eliminating **clothing** from the definition of income and from the definition of in-kind support and maintenance. As a result, we generally will not count gifts of clothing as income when we decide whether a person can receive SSI benefits or when we compute the amount of the benefits. Second, we are changing our resource-counting rules in the SSI program by eliminating the dollar value limit for the exclusion of **household goods and personal effects**. As a result, we will not count household goods and personal effects as resources when we decide whether a person can receive SSI benefits. Third, we are changing our rules for excluding an automobile in determining the resources of an SSI applicant or recipient. We will exclude one **automobile** (the ‘first’ automobile) from resources if it is used for transportation for the individual or a member of the individual’s household, without consideration of its value. These changes will simplify our rules, making them less cumbersome to administer and easier for the public to understand and follow.” These rule changes are important protections for people with disabilities. The rules changed included: 20 CFR 416.1102 (what is income); 20 CFR 416.1103 (what is not income); 20 CFR 1210 (exclusions from resources); and 20 CFR 1216 (household goods and personal effects).

The SSA’s Supplemental Security Income (“SSI”) program legal standards govern SSI eligibility for special needs trust beneficiaries who receive SSI. These SSI distribution standards also govern Medicaid as a matter of federal law unless individual states provide more lenient standards in accordance with relevant legal standards. 42 U.S.C. 1396a(a)(10)(C)(i)(III) requires states to use a “single standard in determining income and resource eligibility...which shall be no more restrictive than the methodology which would be employed under the Supplemental Security Income [SSI] program...” See also 42 USC 1396 (a)(18) which also requires state Medicaid agencies to comply with the provisions of 42 USC 1396p in the treatment of special needs trusts. 42 USC 1396p at subsection (e)(2) thereof requires state Medicaid agencies to apply the 42 USC 1382a SSI definition of income. Federal regulations enacted under 42 USC 1382a, including 20 CFR 416.1130(b), define in-kind support and maintenance as food and shelter provided by another. 20 CFR 416.1102, enacted under 42 USC 1382a, also defines income as cash or in-kind food and shelter. 20 CFR 416.1103, enacted under 42 USC 1382a, states that items that are not food or shelter or cannot be used to obtain and shelter are not income and gives examples.

- 2. CAN A FAMILY MEMBER BUY GROCERIES, PAY RENT OR GIVE CASH TO A PERSON WITH DISABILITIES WITHOUT IT AFFECTING THEIR SSI OR MEDICAID? NO.** The SSI “food and shelter” standard is one of the most important federal regulations to remember. If a family member purchases food or shelter for a person receiving Medicaid or SSI, it can result in a reduction of public benefits. Also, cash distributed directly to a person receiving Medicaid or SSI can result in a reduction in public benefits.

It is important to focus on the following three key principles in these federal regulations and POMS: (1) 20 CFR 416.1102 and POMS SI 01120.201(I)(1)(a) both state that cash distributions directly to a beneficiary are counted as income. Such cash payments reduce the SSI check.¹ (2) 20 CFR 416.1102, 20 CFR 416.1121(h) and POMS SI 00810.005(A)(3) state that distributions made directly to a vendor for food or shelter are counted as income, with the result that the SSI check can be reduced by less than one-third for these distributions. (3) 20 CFR 416.1103, POMS SI 01120.201(I)(1)(c) and POMS SI 00815.001(B) state that distributions made directly to a vendor for items **other than** food and shelter are **not** considered to be in-kind distributions for support and maintenance.

To understand the above SSI “food and shelter” standard, it is important to understand the definitions of the words “food” and “shelter” in the SSI regulations, POMS and other SSA guidance material.

“Food” is a straightforward word, but certain items are not considered income in the form of food in certain circumstances. For example, food “provided during a medical confinement is not income” under POMS SI 00815.100(A)(1) and a “medical confinement exists when an individual receives inpatient medical services in a medical/treatment facility” under POMS SI 00815.100(A)(2). Some prescribed medical items, which also provide nourishment, are permitted to be provided under POMS SI 00815.050 on an outpatient basis. Food provided in a governmental program is not income under 20 CFR 416.1103(3). Food provided during a temporary absence of greater than 24 hours from home, such as a trip, is not income under POMS SI 00835.040. “Food which you or your spouse raise if it is consumed by you or your household” does not count against a person under 20 CFR 416.1124. Also, “dog food”, such as for a seeing eye dog, is not considered income in the form of food under POMS SI 00815.050(B). (Pets themselves are allowed because they, obviously, are not food or shelter or cash). There is also a \$20 monthly general income cash exclusion and a quarterly \$60 irregular and infrequent cash exclusion that could apply for a restaurant meal or other food for a person with disabilities. See endnote 1 to this article for more information on these cash exclusions.

“Shelter” is defined in 20 CFR 416.1130. “Shelter generally includes “room” and “rent”, as well as other items such as “heating fuel, gas, electricity, water, sewerage, and garbage collection services.” However, a “room” is not considered income in the form of shelter when provided during medical confinement. See

POMS SI 00815.050. Shelter provided during a temporary absence of greater than 24 hours from home, such as a trip, is not income under POMS SI 00835.040. Also, per - POMS SI 01120.200F.2, when a house is held as a trust asset which is not a resource for SSI purposes, an eligible individual does not receive income in the form of rent-free shelter while living in the house. (However if, for example, the trust makes a mortgage payment on the home, the individual would receive income in the form of shelter.) Under 20 CFR 416.1103(j) and 20 CFR 416.1201, “household goods are not considered shelter.” “Furniture, appliances, electronic equipment such as personal computers and televisions sets, carpets, cooking and eating utensils, and dishes” are permitted under 20 CFR 416.1216. Under 20 CFR 416.1216, “personal care items and educational or recreational items such as books or musical instruments” are also permitted, as are “items required because of an individual’s impairment.” Under 20 CFR 416.1157, “home energy assistance” is not counted as shelter, and home energy assistance means “any assistance related to...heating or cooling a home, including portable heaters, fans and blankets.” Under 20 CFR 416.1103(i) “weatherization” such as “insulation, storm doors and windows” are not shelter. Under 20 CFR 416.1103(g) “lawn mowing” services are not considered shelter. Under 20 CFR 416.1103(b) shelter does not include “house cleaning” and “homemaker services.” Under 20 CFR 1216 personal effects are not counted when “ordinarily worn or carried by the individual” or “articles otherwise having an intimate relation to the individual” including personal care items and certain limited jewelry. “Telephone bills” are not considered shelter. See POMS SI 00815.400(B)(2) which states: “Joshua Hall, an SSI recipient, is unable to pay his phone bill so his sister pays the phone company with her own money. Neither the payment to the phone company nor the telephone service received as a result of the payment is income because it is not food or shelter.” There is also a \$20 monthly general income exclusion and a \$60 quarterly irregular and infrequent income exclusion. See endnote 1 to this article for more information on these cash exclusions.

- 3. CAN A FAMILY MEMBER PAY BILLS OTHER THAN FOR FOOD OR SHELTER? YES.** See 20 CFR 416.1103 and POMS SI 00815.001(B). There are also many specific and helpful “safe harbor” examples of permitted payments set forth in 20 CFR 416 and the POMS SI 00815. These examples also meet the overarching “no food and shelter” standard discussed above. Although 20 CFR 416.1103 and POMS SI 00815.001(B), which are discussed above in answer to question 2, are key, the “safe harbor” examples give a second specific reason why the particular trust distribution is lawful. The fact that they are given as examples of permitted payments in the federal regulations gives them a “safe harbor” protected status.

“Payment of your bills by someone else directly to the supplier is not income” under 20 CFR 416.1103(g). This is perhaps the most important of the “safe harbor” expenditure provisions in the federal regulations because this provision explicitly permits all checks to vendors, other than for food or shelter. This regulation then goes on to illustrate this important distribution rule: “Examples: If

your daughter uses her own money to pay the grocer to provide you with food, the payment itself is not your income because you do not receive it. However, because of your daughter's payment, the grocer provides you with food; the food is in-kind income to you. On the other hand if your brother pays a lawn service to mow your grass, the payment is not income to you because the mowing cannot be used to meet your needs for food or shelter. Therefore, it is not in-kind income as defined in 20 CFR 416.1102. In accord is POMS SI00 815.400 which gives several examples including: "Joshua Hall, an SSI recipient, is unable to pay his phone bill so his sister pays the phone company with her own money. Neither the payment to the phone company nor the telephone service received as a result of the payment is income because it is not food or shelter."

- 4. CAN A PERSON WITH DISABILITIES OWN A MOTOR VEHICLE, REAL ESTATE, OR OTHER NON-FOOD/SHELTER ITEMS? YES.** Any excluded non-liquid resource item that the person with disabilities receives (other than food or shelter) is not considered income in accordance with 20 CFR 416.1103(j). This safe harbor provision is very important because it permits a wide range of items. "Furniture, appliances, electronic equipment such as personal computers and television sets, carpets, cooking and eating utensils, and dishes" are permitted under 20 CFR 416.1216. Under 20 CFR 416.1216, "personal care items and educational or recreational items such as books or musical instruments" are also permitted, as are "items required because of an individual's impairment." Under 20 CFR 416.1157, "home energy assistance" provided by a State certified agency is not counted as shelter, and home energy assistance means "any assistance related to...heating or cooling a home, including portable heaters, fans and blankets." Further, excluded non-liquid resource items under 20 CFR 416.1201 may include: "household goods, automobiles, trucks, tractors, boats, machinery, livestock, buildings and land." POMS SI 00815.550(C) provides additional examples concerning vans: "Eddie Glyndon is a disabled child living in his parents' household and confined to a wheelchair. A local church accepts donations from the community and purchases a van specially equipped with a wheelchair lift to transport Eddie. The church gives the van to Eddie's parents. Since the van is their only vehicle and will become an excluded nonliquid resource in the month after the parents receive it (see SI 01130.200A.3.), the value of the van is not income to Eddie's parents for deeming purposes...". One automobile that provides essential transportation is protected under 20 CFR 416.1218 and POMS SI 01130.200A.3. POMS SI 00815.550(A) states that "The value of any noncash item (other than an item of food or shelter) is not income if the item would become partially or totally excluded nonliquid resource if retained into the month after the month of receipt. A list of items considered to be excluded nonliquid resources is found at POMS SI 01110.210.
- 5. IS IT PERMITTED TO TRADE IN A MOTOR VEHICLE, REAL ESTATE OR OTHER RESOURCE? YES.** Sale, exchange or replacement of a resource is not income, but is instead considered to be a resource which has changed its form. This includes any cash or in-kind item that is provided to replace or repair a

resource that has been lost, damaged or stolen. An example given was “Jerry Wallace sells his 1974 Plymouth Satellite for \$300.00. The money he receives is not income, but a resource which has been converted from one form (a car) to another form (cash).” POMS SI 00815.200. This stands for the proposition that trading in a van for a newer one will not cause disqualification. However, if an excluded resource is sold for cash, the cash may be a countable resource if retained into the next month. Funds from the sale of an excluded home if reinvested in a timely manner in another excluded home is also permitted in POMS SI 01130.110.

- 6. CAN A FAMILY MEMBER PAY FOR EDUCATION COSTS FOR A PERSON WITH DISABILITIES? YES.** Grants, scholarships, gifts or fellowships used for paying tuition, fees, or other necessary educational expenses are not counted as income under 20 CFR 416.1124(3).
- 7. CAN A FAMILY MEMBER PURCHASE MEDICAL ITEMS, MEDICAL SERVICES AND MEDICAL INSURANCE FOR A PERSON WITH DISABILITIES? YES.** Medical items paid for by a third-party are specifically permitted “such as prescription drugs, eye glasses, prosthetics and their maintenance....wheelchairs, modified scooters...specially trained animals (eg: seeing eye dogs) and their maintenance” under POMS SI 00815.050(B). Medical services paid directly to the doctor’s office or hospital by someone else, are specifically permitted under 20 CFR 416.1103(a) and POMS SI 00815.050. Payments by a third-party of a disabled person’s medical insurance premiums are specifically permitted under the POMS SI 5.400.
- 8. CAN A FAMILY MEMBER PURCHASE OTHER SERVICES FOR A PERSON WITH DISABILITIES? YES.** “A personal service performed for an individual is not income. Examples include; mowing the lawn; doing house cleaning; going to the grocery; and babysitting” POMS SI 00815.150. Weatherization assistance is not income under 20 CFR 416.1103(i). The regulation also gives several examples of permitted weatherization: “Insulation, storm doors and windows”.
- 9. TRIPS – CAN A FAMILY MEMBER PAY? BASICALLY YES.** “[A]ny commercial transportation ticket, for travel among the 50 states, the District of Columbia, the Commonwealth of Puerto, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, which is received as a gift and is not converted to cash” is a permitted expenditure under 20 CFR 1124(16). See also 42 USC 1382a(15). Food and shelter paid for during a temporary absence, such as a trip, does not disqualify under POMS SI 00835.040. Also, “entertainment” is a permitted expenditure, under the “Spotlight on Trusts” publication issued by the US Social Security Administration. There is also a \$20 general income exclusion and a \$60 quarterly irregular and infrequent income exclusion. See endnote 1 to this article for more information on these cash exclusions.

10. CAN A PERSON WITH DISABILITIES TRANSFER OWNERSHIP OF A RESOURCE AS A GIFT TO A LOVED ONE? BASICALLY NO. POMS SI 1150.001 states: “Transferring ownership of a resource may affect the value of an individual's countable resources which in turn can affect SSI eligibility. As of 12/14/99, transferring ownership of a resource for less than fair market value can result in a period of ineligibility for SSI.... A transfer of income in the month it is received is considered a transfer of a resource if the income would have been considered a resource in the following month....Example: Mr. Smith receives an inheritance of \$5,000 in May, 2006. In the same month, he transfers the \$5,000 to his brother. The \$5,000 inheritance is counted as unearned income in May. It is also considered to be a transfer of a resource in May....See SI 01150.110C for a discussion of the look-back date....” See also 42 USC 1382b (c)(1).

Funds can be transferred by a person with disabilities to a special needs trust for the sole benefit of that individual with disabilities, but the above cited laws and guidance material do not explicitly state that gifts from an SSI or Medicaid recipient to a loved one are allowed. Gifts from a person with disabilities to a loved one can result in a severe reduction in benefits. The \$20 and \$60 exclusions discussed in endnote 1 do not apply to gifts from a person with disabilities to a loved one either. The SSA generally does not tell SSI recipients how to spend their SSI check. When SSA is determining the monthly check amount, they do not take into consideration actual living expenses. The benefit amount is based only on income. When the monthly check is issued, the SSA generally does not then specify how or on what the benefits are to be spent. However, if an individual has a representative payee and that representative payee spends the SSI benefits for gifts to others while the eligible individual's needs are not being met, it could be considered “misuse of benefits” under GN 00602.001. The representative payee annual accounting form asks how the money was spent and gives specific categories of purchases. Also, if it is a special needs trust, 42 USC 1396p(d)(4) requires that the trust funds be used for the benefit of the person with disabilities.

11. WHAT ABOUT FUNERAL AND BURIAL EXPENSES? YES, WITHIN LIMITS. Burial space or plot (including the space and plot, a coffin, vault, crypt or other “items used for internment of the deceased's remains”) is an excluded resource “regardless of value” for the individual and members of the individual's family under POMS SI 01130.400 and has no effect on the burial funds exclusion”. Burial funds: Up to \$1,500 each for the individual and spouse are excluded under POMS SI 01130.410 including items such as transportation of the body; embalming, cremation, flowers, clothing, and services of the funeral director and staff. Certain prepaid burial contracts are excluded if the burial contracts “cannot be revoked or sold” under POMS SI 01130.420. See also POMS 01130.400 and POMS 01130.410.

12. DO MEDICAID ADMINISTRATORS ALLOW THE PURCHASES DESCRIBED IN THIS ARTICLE DESCRIBING THE SSI RULES? YES.

The US Social Security Administration Supplemental Security Income (“SSI”) program legal standards govern SSI eligibility for special needs trust beneficiaries who receive SSI. These SSI distribution standards also govern Medicaid as a matter of federal law unless individual states provide more lenient standards in accordance with relevant legal standards. 42 U.S.C. 1396a(a)(10)(C)(III) requires states to use a “single standard in determining income and resource eligibility ... which shall be no more restrictive than the methodology which would be employed under the Supplemental Security Income [SSI] program...” See also 42 USC 1396 (a), which also requires state Medicaid agencies to comply with the provisions of 42 USC 1396p in the treatment of special needs trusts. 42 USC 1396p at subsection (e)(2) thereof requires state Medicaid agencies to apply the 42 USC 1382a SSI definition of income. Federal regulations enacted under 42 USC 1382a, including 20 CFR 416.1130(b), define in-kind support and maintenance as food and shelter provided by another. 20 CFR 416.1102, enacted under 42 USC 1382a, also defines income as cash or in-kind food and shelter. 20 CFR 416.1103, enacted under 42 USC 1382a, states that items not used for food and shelter are not income and gives examples. New Hampshire has a state statute (NH RSA 167:4(V)) which requires New Hampshire to follow the federal SSI distribution standards for Special Needs Trusts while operating the medical assistance program. This New Hampshire law is also known as “Emily’s Law” after Emily Huff, a young woman with disabilities whose case resulted in (1) the N.H. Supreme Court’s decision Appeal of Huff, 2006 NH (2005-856), and then (2) RSA 167:49(V).

13. ARE SPECIAL NEEDS TRUSTS ALLOWED TO MAKE THE SAME PURCHASES FOR PEOPLE WITH DISABILITIES THAT FAMILY MEMBERS CAN? YES, and special needs trusts can do so after the family member has passed on, if provided for in the specific terms of the trust.

14. WHAT IS A SPECIAL NEEDS TRUST? A special needs trust is a trust that holds title to property for the benefit of a person who has a disability. The special needs trust can be used to provide for the needs of a disabled person to supplement benefits received from various governmental assistance programs including Medicaid and SSI. A trust can hold cash, personal property or real estate, or can be the beneficiary of life insurance proceeds.

Special needs trusts can make the same purchases family members can make with their own funds for the person with disabilities and can continue to do so after the family member’s death (if the terms of the trust allow), including medical expenses not covered by public benefits, dental expenses, eye exams, as well as transportation including vehicle ownership, home ownership, furniture, furnishings, household goods and programs of training and education. Special needs trusts may also purchase computers, telephones, televisions and radios, and other items.

15. DOES THE SOCIAL SECURITY PROGRAM ALLOW SPECIAL NEEDS TRUSTS? YES.

Since 1975 the Social Security Administration has had established rules allowing assets to be held in trust for a recipient of SSI if the disabled beneficiary cannot control the amount or the frequency of trust distributions and cannot revoke the trust. In 1999 Congress confirmed by statute the use of special needs trusts in the Social Security context. See 42 USC 1382b(e)(5). The 1999 law proscribed certain limitations and restrictions on the establishment and use of trusts by SSI recipients and applicants.

16. DOES THE MEDICAID PROGRAM ALLOW SPECIAL NEEDS TRUSTS? YES.

Special needs trusts have been used for many years in the Medicaid context, and in 1993 Congress confirmed the use of special needs trusts with respect to Medicaid. See 42 USC 1396p(d)(4).

17. SHOULD I CONSIDER ESTABLISHING A SPECIAL NEEDS TRUST IF SSI AND MEDICAID ARE NOT INVOLVED? SOMETIMES YES.

A special needs trust individually tailored to the needs of a person with disabilities can make a big difference for a person who is not receiving public benefits. Special needs trusts provide a protective management service and certain liability protections and can provide supplemental help in the event of need in the future for public benefits.

18. WHO CAN ESTABLISH A SPECIAL NEEDS TRUST?

A special needs trust that is not subject to resource-counting can be established by a parent, grandparent, legal guardian or a Court. Parents for example, can “pour-over” a disabled child’s inheritance into this trust where the inheritance might otherwise disqualify the child from public benefits. Also, a disabled person who expects to receive money may establish a special needs trust under certain circumstances. See 42 USC 1396p(d)(4)(C).

19. CAN A SPECIAL NEEDS TRUST BE USED FOR GIFTS, INHERITANCES, PERSONAL INJURY SETTLEMENTS, LUMP SUM SOCIAL SECURITY CHECKS AND MONEY RAISED IN THE COMMUNITY FOR A PERSON WITH DISABILITIES? YES.

The Trust protects the gift, inheritance, settlement, funds raised or lump sum, for the special needs of a person with disabilities. Note that there are special rules of establishment of such trusts; see POMS SI 01120.203. Also, lump sum checks for children may have to be deposited into a dedicated account; see SI 01120.601.

20. WHO MANAGES THE TRUST ASSETS?

The manager of a trust is called a “trustee”. The trustee invests the trust funds and spends the funds to benefit the person with disabilities.

21. WHO MAY SERVE AS TRUSTEE?

When a special needs trust is established by parents for the benefit of a disabled child, those parents may serve as the trustee until they die or become incapacitated. When that occurs a successor,

selected in advance by the parents or other person establishing the trust, continues to serve according to instructions contained in the trust. Parents may also name another trustee at the start and have property go into the trust after their deaths. The trustee can be an individual (over eighteen years of age), a bank, or other fiduciary and can also involve a non-profit organization.

22. ARE NON-PROFIT ORGANIZATIONS GIVEN A SPECIAL STATUS UNDER FEDERAL LAW AS TRUST MANAGERS OF SPECIAL NEEDS TRUSTS? YES.

When Congress confirmed the use of special needs trusts in 1993, the law stated that non-profit organizations may manage special needs trusts, and that non-profit trusts could retain funds in trust even after the death of the beneficiary. Congress reconfirmed this in 1999. See 42 USC 1396p(d)(4) and 42 USC 1382b(e)(5).

23. CAN SOMEONE BE NAMED TO OVERSEE THE TRUSTEE? YES.

A family member such as a sibling or another person or organization named by the parents or whoever the establishes the trust, can be given veto power over the trustee and still have the trustee be responsible for day-to-day operation of the trust. This type of provision is called a special power of appointment or trust protector.

24. CAN THE PERSON WITH DISABILITIES SERVE AS TRUSTEE? NO.

The premise of a special needs trust is that the disabled beneficiary does not have signature authority over the trust funds. The assets of the trust are for the benefit of the disabled person, but the disabled person while living can have no power or authority to direct the payment of funds and still receive Medicaid or SSI. If the person with disabilities is the trustee, then the trust funds are considered available resources that must be spent down before Medicaid and SSI can be provided.

25. WHAT IS PLACED IN THE TRUST TO ESTABLISH IT? Virtually any kind of asset may be held by the trust. Holding title in the trust results from transferring the title into the trust's name. Many times a trust has no assets put into it (other than a nominal sum such as \$10.00) until the death of the parent or other person who establishes the trust. The special needs trust in that case is an empty shell waiting for a future event. At times it may be preferable to put assets into the trust and begin using the trust immediately, but immediate use is not required.

26. CAN ADDITIONAL PROPERTY BE PUT INTO THE TRUST? YES.

Additional property may be added the Trust by the person who established it or other people including grandparents and friends. Additions may be made by gifts during life, by will, living trust or life insurance policies.

27. WHAT IS THE DIFFERENCE BETWEEN HAVING A SPECIAL NEEDS TRUST AND JUST HAVING A BANK OR BROKERAGE ACCOUNT DESIGNATED TO BE USED FOR A FAMILY MEMBER WITH

DISABILITIES? A special needs trust is able to maintain public benefits eligibility, protect against people trying to take advantage, and provide rules for management of the funds. Trusts typically have provisions to help resolve issues that might come up, after a parent's death. Trusts look over the horizon based on experiences others have had after family members pass on. Special needs trusts are no more complicated than 529-like plans. 529 plans have been known to create public benefits eligibility problems, as have Individual Retirement Accounts (IRA's), 401(k) plans, 403(b) plans, Uniform Transfers to Minors Act (UTMA) accounts and pay on death (POD) accounts.

28. WHAT IS THE DIFFERENCE BETWEEN A SPECIAL NEEDS TRUST AND SPENDING DOWN ASSETS UPON RECEIPT? If a spend down is the selected choice, then simple final arrangements, an automobile, household goods and household repairs are common spend down purchases. The special needs trust approach allows the funds to be held over time rather than spent down rapidly without planning for the future. Special needs trusts work in partnership with public benefits to help people with disabilities have a better quality of life in the future.

29. HOW DO I FIND ON THE WEB THE LAWS, REGULATIONS AND FEDERAL AGENCY GUIDANCE INFORMATION DISCUSSED IN THIS ARTICLE? There are a number of federal statutes, regulations and other reference materials to consider.

Currently, relevant federal statutes are found <http://www.gpoaccess.gov/>. The federal **SSI statute** to start with is 42 USC 1382b(e)(5). The federal **Medicaid statute** to start with is 42 USC 1396 et. seq. including 1396a(10)(C)(i)(III).

The Code of Federal Regulations provisions pertaining to SSI (**SSI Regulations**) are currently found at http://www.ssa.gov/OP_Home (then go to Code of Federal Regulations (CFR), then to number 416). The **SSI regulations** at 20 CFR 416 are also now available at <http://www.gpoaccess.gov/>. Start with 20 CFR 416.1102, CFR 416.1121(h) and 20 CFR 416.1103. To access these regulations go to <http://www.gpoaccess.gov/> homepage, then go to Access Resources by Branch, then go to Executive Resources, and then click on Code of Federal Regulations. You must type in the regulation in the search box without any spaces.

The federal **Medicaid regulations** at 42 CFR 435 are available at http://www.access.gpo.gov/nara/cfr/waisidx_02/42cfr435_02.html

The Social Security Administration's **Programs Operations Manual System (POMS)**, is currently available online at http://www.ssa.gov/OP_Home (then go to The Program Operations Manual System (POMS) then go to the Table of Contents, then go to SI-Supplemental Security Income, then go to SI 008 and SI 011).

The Social Security Administration **SSI information release** “Spotlight on Trusts” is available at <http://www.socialsecurity.gov/ssi/spotlights/spot-trusts.htm>.

The US Social Security Administration periodically updates its website, as does the US Government Printing Office (gpo). For updates on where the above guidance materials may be found in the future, check with relevant sources. Also, <http://www.johnkitchenlawoffices.com> has periodic updates about where to find federal laws on the web, but remember that you need to contact an attorney in your state for specific legal advice.

¹Under 20 CFR 416.1124, there is a \$20 monthly general income exclusion and a \$60 irregular and infrequent quarterly income exclusion. The \$20 monthly general cash exclusion reads as follows: “The first \$20 of any unearned income in a month other than income in the form of in-kind support and maintenance received in the household of another (see §416.1131) and income based on need. Income based on need is a benefit that uses financial need as measured by your income as a factor to determine your eligibility. The \$20 exclusion does not apply to a benefit based on need that is totally or partially funded by the Federal government or by a nongovernmental agency. However, assistance which is based on need and funded wholly by a State or one of its political subdivisions is excluded totally from income as described in §416.1124 (c)(2). If you have less than \$20 of unearned income in a month and you have earned income in that month, we will use the rest of the \$20 exclusion to reduce the amount of your countable earned income.” The quarterly exclusion regulation reads as follows: “The first \$60 of unearned income received in a calendar quarter if you receive it infrequently or irregularly. We consider income to be received infrequently if you receive it only once during a calendar quarter from a single source and you did not receive it in the month immediately preceding that month or in the month immediately subsequent to that month. We consider income to be received irregularly if you cannot reasonably expect to receive it.” This \$20 and \$60 rule does not apply to a birthday present or other gift from an SSI or Medicaid recipient.

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