

Is Your Child Disabled? If so, an Inheritance from You Could Cost Them their Benefits

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Many times, a person on disability relies on certain governmental benefit programs such as Medicaid (known as MassHealth in Massachusetts) or Supplemental Security Income (SSI) for support and medical insurance. They may receive SNAP benefits (commonly known as food stamps), PACE (commonly known as fuel assistance), Section 8 housing, and other assistance programs. These programs often have strict income and asset eligibility requirements. A well-meaning inheritance could cause the person to lose important benefits, though proper planning can help avoid these consequences. In my practice, I often hear parents of a disabled child tell me that they plan to disinherit the disabled child and leave their estate to another well child who will, they expect, “look after” the disabled child. While the parents are well intentioned, this is often a recipe for disaster. The well child has no obligation of support for the disabled child and could, without any legal consequences, keep all of the inheritance. Parents often tell me “my child would never do that.” But then I ask: what if your well child gets divorced, dies, becomes disabled themselves, or is in an accident?

In these situations, the money could then be lost through no

fault of the well child. Are you willing to take this gamble when there is a safer solution? A far less risky option is to create a Special Needs Trust (SNT) for the benefit of the disabled child. In the parent's Will, the parent leaves the disabled child's share to the SNT rather than directly to the disabled child. The funds in a properly crafted SNT should not disqualify the disabled child from benefits. The funds are then available to help pay for services and "extras" not paid for by the programs. It creates a nest egg for the disabled child and should be protected from the claims of the Trustee's creditors. For example, Mom and Dad, in their Wills, leave \$50,000 to a SNT created by them for the benefit of their child, Mary, who has Down Syndrome and is dependent on Medicaid/MassHealth for her health insurance. The Trust assets should not disqualify Mary and can be used to pay for things such as extra medical care not covered by Medicaid, a vacation, clothing, entertainment, or perhaps even a car! After Mary dies, any money remaining in the trust will be paid out to whomever Mom and Dad designated when they created the SNT.

A competent elder and special needs attorney can guide families through the difficult issues to create an estate plan that follows the family's wishes, cares for the disabled individual properly, and allows for continuation of government benefits. If you have a loved one who relies on government benefits for support, we encourage you to call a qualified attorney today.

Do you have a suggestion for a future article topic for Attorney Walecka? Reach out to him directly with a question or topic you think would be helpful to readers.

The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for

everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.