

To Whom It May Concern:

It has come to my attention as (Trustee, Agent, attorney for the trust) that (beneficiary) is receiving HUD Section 8 Housing Assistance. As a result, questions have been raised as to what impact the Special Needs Trust has on (beneficiary's) eligibility for this benefit.

Enclosed please find a copy of the _____ Special Needs Trust. (beneficiary) is the beneficiary of this trust, is not (his/her) money. This trust is Irrevocable and is not accessible to the beneficiary. It is a spendthrift discretionary trust, and the Trustee has control over all distributions. As a result, according to the *Housing Choice Voucher Program Guidebook*, an Irrevocable Trust is defined as:

“(1) This is a trust agreement that allows an individual to permanently transfer assets during his/her lifetime to someone else.

(2) Trusts which are not revocable by or under the control of any member of the family are not considered assets.

(3) Instead, the regulation requires that the actual income distributed to the tenant family from such a trust be counted when determining Annual Income.”

The guidebook, then refers to Exhibit 5-2 which outlines the specific income and exclusions to the program. Specifically, please refer to exclusions (4) and (9) which state:

(4) “Amounts received by the family that are specifically for, or in reimbursement of the cost of medical expenses for any family member;”

and

(9) “Temporary, nonrecurring, or sporadic income (including gifts). . .”

It is our position that distributions from this trust should not be counted as income for the following several reasons. First, the distributions are not made directly to the beneficiary. They are made to third parties on their behalf. Therefore, they are not “actual” income distributed to the family, and should be excluded for purposes of Section 8 eligibility, as they are for eligibility for Supplemental Security Income and Medicaid.

Second, some of the distributions are medical expenses, and therefore are specifically excluded based on exclusion (4) above. Specifically, the following distributions are medical expenses, (insert information).

Third, as this is a pure discretionary trust the distributions are sporadic, and are not, “periodic and determinable allowances” as a support trust might be. They are therefore excluded based on exclusion (9) above.