

SNTs, Public Benefits Eligibility, and Housing Issues for People with Disabilities

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Part Two Basics: Benefits Eligibility

An individual with disabilities may be eligible for a wide range of public benefits and assistance programs. When drafting SNTs, it is important to be aware of what these programs entail and how one becomes eligible for public assistance. The following are available programs that every special needs planner should be familiar with.

I. Medicaid

Medicaid¹ is a program jointly funded by federal and state funds, but administered by the individual states. Generally, federal funds are given to the states to establish medical assistance programs for low income and disabled individuals who reside within that state. The way the programs are developed and carried out varies from state to state. Applicants for Medicaid must meet certain requirements. The program is means-based, with both income and resource testing. Although the individual states are able to determine many details of the program, there are certain medical services that Medicaid must cover.²

II. Medicaid Waivers

Medicaid waiver programs were first enacted by Congress in 1981.³ The Social Security Act §1115, allows the Secretary of the Department of Health and Human Services (HHS) to waive certain requirements of the traditional Medicaid program.⁴ The Secretary of HHS provides federal Medicaid funds to a state, and

¹ For more information on the Medicaid program, see <http://www.cms.hhs.gov/home/medicaid.asp>.

² Enumerated mandatory services may be found at 42 USC § 1396d(a)(1)-(24).

³ Julia Gilmore Gaughan, Comment, *Institutionalization as Discrimination: How Medicaid Waivers, the ADA, and §1983 Fail*, 56 U. Kan. L. Rev. 405, 408 (2007).

⁴ The Henry J. Kaiser Family Foundation, The New Medicaid and CHIP Waiver Initiatives 11 (2002) [hereinafter *The New Medicaid*], <http://www.kff.org/medicaid/4028-index.cfm>.

under the waiver, that state may provide coverage that does not necessarily meet federal standards. In essence, it waives some of the federal requirements.

For people with developmental disabilities, the waivers represent a progression away from unnecessary institutionalization, toward integration in the community. Medicaid Waiver programs require “budget neutrality,” meaning that a particular state’s federal funding for a waiver program cannot exceed what the cost of traditional Medicaid would be in that state without such a program.⁵ The states that use waivers take the federal funds, create a number of available slots for eligible Medicaid beneficiaries, then fill the slots accordingly with the eligible individuals.⁶ If there are more individuals than slots, waiting lists are employed until a slot becomes available.⁷ While on a waiting list the individual will remain on traditional Medicaid.

1915(b) waivers⁸ are available for individuals with developmental disabilities or severe mental illness. Besides the basic Medicaid covered services for medically necessary health care, this waiver expands coverage to psychological testing, psychiatric evaluations, behavioral analysis, and other services related to mental health.

Home and community-based services waivers (HCBS), codified in § 1396n(c), are used in many states to keep people with different types of disabilities integrated in the community, and out of institutions.⁹ The waivers differ from traditional Medicaid in that the waivers do not adhere as strictly to income and resource requirements, and allow the states to experiment with different types of alternative care. These Medicaid waivers are especially helpful for individuals living with mental illness, as the waivers give these individuals more choice and flexibility in their treatment. From 1992 to 2002, Medicaid spending on HCBS waivers has more than doubled, jumping from 15% to 31% of

⁵ *The New Medicaid* at 11.

⁶ “States often have more individuals in need of waiver services than the number of available spaces, called ‘slots,’ on a program. Many states use waiting lists when their program slots are filled.” The Henry J. Kaiser Family Foundation, Medicaid 1915(c) Home and Community-Based Service Programs: Data Update, 9, (2005), <http://www.kff.org/medicaid/upload/7345.pdf>.

⁷ *Id.* at 9.

⁸ 1915(b) waivers are also known as “Managed Care or Freedom of Choice” waivers. Like other waivers, the 1915 (b) waiver allows a state to waive certain traditional Medicaid requirements. See www.cms.hhs.gov follow the “Medicaid” hyperlink.

⁹ 42 U.S.C. §1396n(c)(1).

the long term care budget in those 10 years.¹⁰ In 2002, more than 2 billion individuals received services through the HCBS waivers.¹¹

For more information on Medicaid Waivers, visit: <http://www.cms.hhs.gov/>.

III. Supplemental Security Income (SSI)

SSI is a federally-funded program that is administered by the Social Security Administration (SSA). The program is means-based and provides income to persons with qualified disabilities and the elderly. This program requires familiarity with the Program Operations Manual System (POMS), which can be found at www.ssa.gov.¹² The POMS state the rules for SSI including eligibility and other important aspects of the program. The purpose of the income is to provide food and shelter, and the program is designed to provide those receiving assistance with approximately 75% of the federally defined poverty level.

There are five eligibility requirements that one must meet to receive SSI:

- Applicant must be at least 65 years old, blind or have a disability;¹³
- The recipient must be a citizen of the United States or meet the requirements set forth in the 1996 Welfare Act and the Balanced Budget Act of 1997;
- The recipient must meet financial requirements;
- The person must file for any other benefits for which they may be eligible. The other benefits will reduce the SSI benefits on a dollar for dollar basis;
- The recipient must not reside in a public institution;

¹⁰ The Henry J. Kaiser Family Foundation, Medicaid 1915(c) Home and Community-Based Service Programs: Data Update, 1, (2005), <http://www.kff.org/medicaid/upload/7345.pdf>.

¹¹ *Id.* at 1.

¹² For a direct link to the POMS, follow:
<https://secure.ssa.gov/apps10/poms.nsf/partlist!OpenView>.

¹³ “Disability means the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. The impairment must be so severe that the claimant is unable to do his or her previous work or any other substantially gainful activity which exists in the national economy. The person’s residual functional capacity and age, education, and work experience will be considered in determining whether the person will be able to do other work.” Begley, Thomas D. and Canellos, Angela, *Special Needs Trusts Handbook*, §2.02 [B](1) (2008).

The financial requirements for SSI eligibility are both income requirements and resource requirements. Income is the money that the individual receives such as wages. The income requirements depend on where the individual lives, and vary from state to state. It is important to contact the local Social Security Administration office for more information about a particular locality. Not all income will be counted against an individual for eligibility purposes. Examples of excluded income are:

- The first \$20 a month of most income you receive;
- The first \$65 a month you earn from working and half the amount over \$65;
- Food stamps;
- Shelter you get from private nonprofit organizations; and
- Most home energy assistance.

Resources for the purpose of applying for SSI include real estate, bank accounts, cash, stocks, and bonds. Social Security does not count all resources when calculating SSI. Items that are excluded are:

- The home the applicant lives in and the land it is on;
- Life insurance policies with a face value of \$1,500 or less;
- Applicant's car (usually);
- Burial plots for applicant and members of their immediate family; and

Up to \$1,500 in burial funds and up to \$1,500 in burial funds for the spouse.

It is important to note that felons, parole and probation violators are not eligible for SSI benefits.

For more information on SSI, visit: http://www.ssa.gov/pgm/links_ssi.htm.

IV. Social Security Disability Insurance (SSDI)

SSDI pays benefits to individuals and their family members if they are "insured," meaning that they have worked long enough and paid Social Security taxes during their term of employment. The disabled wage earner is entitled to benefits, along with their spouse and children, based on the work record of the wage earner.

For more information on SSDI, visit: <http://www.ssa.gov/disability/>. Also, see materials later in this conference: *"Understanding SSDI, How To: Get SSDI, Handle Denials, Loss of Benefits, Overpayments and Coordinate with Other Benefits."*

V. Public Housing Benefits

Section 8 Housing is a federal program that provides housing assistance to individuals with disabilities. The Section 8 Housing Assistance Payments Program was created by the Housing and Community Development Act of 1974. Housing and Urban Development Agency (HUD) pays rental subsidies for eligible families, to ensure that they live in a safe environment. HUD funds Public Housing Agencies (PHAs), and PHAs contract with the owner to make rent payments on behalf of the family, if the PHA determines that the family's unit and tenancy is appropriate.

Eligibility for Section 8 housing assistance is based on meeting the definition of "family", the family's size, and the total gross income of the family.¹⁴ The statutory definition of family is broad and includes both single individuals and groups of people.¹⁵ A family's income may not exceed 50% of the median income for the county or locality where the family chooses to live.¹⁶ Median income levels vary by location and are published by HUD.¹⁷

For a detailed discussion of housing issues, see handout titled "*Part Three Basics: Section 8 and Supportive Housing Issues.*"

VI. Food Stamps

The Food Stamp Program is designed to provide nourishment assistance to low income individuals and their families. Eligibility is determined on a household basis. The general test for eligibility is that the household applying for food stamps may not have more than \$2,000 in resources. If your household includes a disabled or elderly individual then the threshold is increased to \$3,000. It is important to note that the individual's home and real property that the home is located on, do not count against the individual as resources for food stamp eligibility purposes. Along with the resource limits, there are also income limits that the household must meet. These limits vary by the size of the household and the makeup of the family. For instance, a family with more disabled or elderly members would be eligible for addition income exclusions.

For more information visit: <http://www.fns.usda.gov/fsp> and <http://www.ssa.gov/pubs/10101.html>.

¹⁴ The regulations that cover this program are found at 24 CFR § 982.

¹⁵ 24 CFR § 982.201(a).

¹⁶ *Housing Choice Vouchers Fact Sheet*, U.S. Department of Housing and Urban Development, available at: http://www.hud.gov/offices/pih/programs/hcv/about/fact_sheet.cfm#4.

¹⁷ *Id.*

VII. Veterans Benefits

The U.S. Department of Veterans Affairs (VA) offers a wide-range of benefits to U.S. veterans, U.S. service members, and their families. The following individuals are eligible for assistance under the VA program:

- A veteran;
- A veteran's dependant;
- A surviving spouse, child, or parent of a deceased veteran;
- An active duty military service member;
- A member of the Reserve or National Guard.

The following benefits and services are available to the above-listed eligible individuals:

- Compensation – VA will pay an eligible veteran monthly compensation if he or she is at least 10% disabled as a result of military service.
- Pension – VA will pay a monthly pension to wartime veterans with limited income. The veteran must be either permanently or totally disabled or at least 65 years of age.
- Health Care – VA provides a number of health care services, including but not limited to: hospital, outpatient medical, dental, pharmacy, prosthetic, nursing home, community-based residential care, counseling, and alcohol and drug treatment.
- Vocational Rehabilitation and Employment – VA will assist veterans with service-related disabilities in preparation for and obtaining employment.
- Education and Training – Benefits to veterans, active duty service members and reservists. Amount of benefits depends on the individual's type of military service.
- Home Loans – Loan assistance may be available to veterans, military personnel, and surviving spouses.
- Life Insurance – Four different types available, depending on nature of individual's military service.
- Dependency and Indemnity Compensation - Paid to certain survivors of service members and veterans. Death pensions are also available to children of deceased wartime veterans.

- Burial – VA offers certain burial services, based on the nature of the individual's service, including: headstones and markers, presidential memorial certificate, burial flag, reimbursement of burial expenses, and burial in a VA national cemetery.

For more information on veterans benefits, visit: www.va.gov.

VIII. Conclusion

Benefits for people with disabilities can be state-specific or county/city-specific. My office created the attached *Special Needs Trust Checklist* to give to beneficiaries and their advocates. It helps assure that all public resources are accessed before private resources from the trust are used. This checklist is helpful to the trustee in administering the trust.