

The basic purpose of a “special needs trust” is to provide benefits, by means of a trust, to a person who would otherwise lose eligibility for public assistance (Supplemental Security Income, Medicaid or Subsidized HUD Housing.) A Pooled Special Needs Trust is designed for the same purpose, but Congress allows the nonprofit organization to “pool” the funds for investment purposes under one Master Trust Document pre-approved by Social Security and Medicaid. The nonprofit then manages each sub-account under the “pooled funds.”

Types of Pooled Special Needs Trusts

Self-funded Trusts. These trusts are established with property or funds belonging to the person with the disability at any age and can be established by the individual, their parent, grandparent, guardian or the court. Finally, the primary remainder beneficiary, at the death of the disabled beneficiary, the state may be reimbursed to the extent that the state paid expenditures for medical assistance under Medicaid.

Third Party Trusts. Trusts funded by someone other than the beneficiary are third party trusts. A third-party trust may benefit a person with a disability as long as it is a special needs trust. This kind of trust may be established either as a living (or “intervivos”) trust or a testamentary trust (created by a will).

1. Ideal for parents or loved ones who want to create a trust for a person who has a disability but does not want them to lose eligibility for public benefits. If there are other family members who want to leave something by will but do not want to create a special needs trust in their wills, they can gift the funds/property to the existing trust. The parent, of course, can make either lifetime or a gift by will to the trust.
2. To create a testamentary trust the parent merely makes a will and includes in it a special needs trust for the child with the disability.

What is a Special Need?

The simple definition of special or supplemental needs is anything that constitutes non-support items. In other words, paying for anything the beneficiary wants for personal use that is not in the category of food or shelter (support expenses). A trust that is deemed special needs cannot provide food or shelter expenses or the trust will be deemed an available resource.

1. Support expenditures are defined in the Social Security Procedures and Operations Manual System (POMS - <https://secure.ssa.gov/poms.nsf/home!readform>)
2. It is easy to say no food or shelter but it can be tricky. For example, basic utilities such as gas, water and electricity are basic shelter expenses that cannot be paid by the trust. Utilities such as telephone and cable service are not basic and can be paid by the trust.
3. Personal use by the beneficiary is important. If the beneficiary wishes to purchase something that is a legitimate purchase for the trust but intends it to be used by someone else, the purchase may not be allowed.
4. Purchase and maintenance of a motor vehicle, as well as paying the insurance is allowable. A motor vehicle is an exempt resource if used for the beneficiary. Other transportation expenses may be paid by the trust.
5. Travel expenses, including a companion, can be paid by the trust. Travel expenses may include travel, accommodations and meals.

	LOW INCOME + LOW RESOURCES + DISABILITY	BASED ON WORK HISTORY + DISABILITY
CASH BENEFITS	<p>SSI – Supplemental Security Income You cannot have more than \$2,000 in cash/assets. 2021 maximum benefit: \$794 BENEFIT COVERS:</p> <ul style="list-style-type: none"> • Shelter (Rent & Utilities) • Food <p>IF trust provides cash SSI will be reduced by each dollar received after the first \$20</p> <p>IF TRUST contributes to food or shelter SSI will be reduced by 1/3 each month contributions are made.</p>	<p>SSDI – Social Security Disability Income NO ASSET LIMIT BENEFIT COVERS:</p> <ul style="list-style-type: none"> • Shelter • Food <p>Trust contribution (cash or in-kind) will NOT reduce the SSDI benefit</p>
MEDICAL	<p>STATE MEDICAID PROGRAM Asset limits: DC - \$4,000 MD - \$2,500 (transfers over 65 allowed) VA - \$2,000 (over 65 transfers NOT allowed) The Trust cannot pay for services covered by Medicaid, unless services were already paid by Medicaid and necessary.</p>	<p>Medicare NO ASSET LIMITS</p>
HOUSING	<p>HUD Subsidized Housing & Section 8 Limited to \$2,000 IN CASH & ASSETS – unless the funds are in an approved ABL account. Currently counts any regular (ongoing) payment from the trust as income – your rent may increase as a result. Follows SSI Rules.</p>	

Trustee Discretion. Sole and absolute discretion for distributions by the trustee is essential for any supplemental needs trust.

1. There can be no way in which the beneficiary can “legally” compel distribution from the trust.
2. That does not mean that the trustee cannot ask the beneficiary what he or she wants (or vice versa). But the final decision is with the trustee.
3. Prior approval by the trustee is important. The beneficiary OR their representative should not incur a debt without prior approval from the trustee.
4. Ideally, purchases should be paid directly from the trust. The trustee should never turn over cash to the beneficiary to buy a desired item. Cash is equivalent to support in terms of public benefit eligibility, resulting in a dollar for dollar reduction in SSI, after the first \$20.

Expenditures that are prohibited by federal or state regulations, or other mishandling of the trust, can result in the beneficiary being disqualified from public benefits.

FOR MORE INFORMATION CONTACT:

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