Special Needs Trusts: What Clerks Need to Know

Trusts and Trust Proceedings, Session 4

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Special Needs Trusts (SNTs) vs. "Traditional Trusts"

- Remember the ABC Trust?
  - "Traditional" Trust - Designed for group of beneficiaries with specific distribution instructions, for a specific purpose and duration.
    - Similar to a trust for children under a certain age, or a trust for a spouse.
  - *Goal – Ensure that a gift or inheritance is distributed in accordance with the settlor's wishes.*
- SNTs are different…

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What is a Special Needs Trust (SNT)?

1. A ***trust***
2. Designed for a beneficiary who has a ***disability***
3. That is purely ***discretionary***,
4. And ***may or may not be required to repay Medicaid*** at the disabled beneficiary's death.*

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Discretion = Control

- "A trust in which the amount to be received by the beneficiary, including whether or not the beneficiary, or a class of beneficiaries, is to receive anything at all, is within the ~~discretion~~ [CONTROL] of the trustee."
- "A trust in which the trustee has no duty to pay or distribute any particular amount to the beneficiary, but has only a duty to pay or distribute to the beneficiary, or apply on behalf of the beneficiary, those sums that the trustee, in the trustee's ~~discretion~~ [CONTROL], determines are appropriate for … the beneficiary."

G.S. 36C-5-504(a)

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What is an SNT for?

1. ***Assist*** someone who has a disability.
2. ***Preserve*** government benefits.

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Purpose of an SNT, Part 1:

Assist someone who has a disability…

- With financial management
- Protect from exploitation
- Ensure that needs are met
- Enhance quality of life

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Purpose of an SNT, Part 2:

Preserve government benefits.

- Medicaid (various programs)
- Social Security
- SNAP (food stamps)
- Section 8 / subsidized housing

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What do we mean by "government benefits"?

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2 Main Types:

RESOURCE-TESTED

WORK-BASED

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Resource-Tested Benefits

Requires determination of disability

- Medical condition exceeding 12 months that prevents…
- Substantial gainful activity (SGA)

Asset limits

- Less than $2,000 of countable resources for individuals
- $3,000 for a married couple

Examples: SSI, Medicaid, SNAP, Section 8

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Is there such a thing as a *Non-Countable* Resource?

YES!

Like What?

- Clothing
- Personal Possessions
- Household Furnishings
- One Vehicle
- The House You Live in

So what is a *countable* resource?

- Money in the bank
- Other financial accounts
- Savings bonds
- Stocks
- Real estate you don't live in
- 2+ vehicle(s)

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And something else too….

The assets in a guardianship.

(More on that later.)

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What are Work-Related Benefits?

- Also requires determination of disability
- Funded by: Payment of SSA and Medicare (FICA) taxes over a period of years
- No asset limits

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Government Benefits: Health Insurance

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Medicaid

- Designed for persons of all ages with few resources
- Payor of last resort
- Comprehensive health insurance*
- Covers long-term care (i.e., nursing home or facility care)*

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Medicare

- Designed for persons over-65
- Covers major medical and prescription drug costs
- Has premiums (that can be paid by Medicaid)
- Limited long-term care (100% first 20 days, sliding scale for next 80 days, then coverage runs out)

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Government Benefits: Income

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Supplemental Security Income - SSI

Resource-Tested

2026 max is $994.00 per month

Designed to be used for food and shelter

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Social Security Disability Income - SSDI

Work-Based

Amount varies based on work record

*NOTE: SSDI is almost always **more** than SSI*

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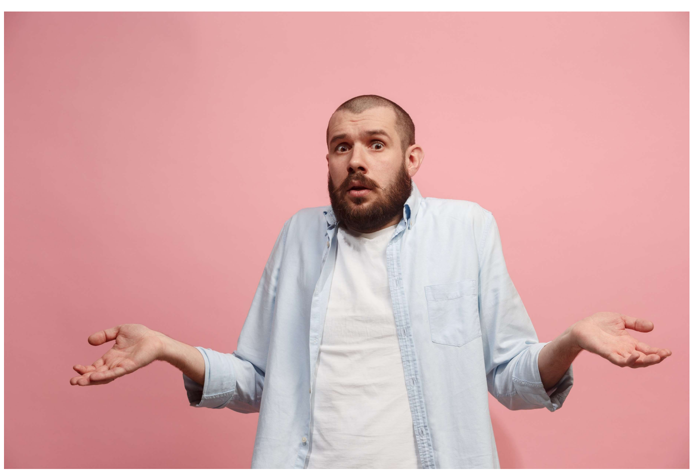
How to make sense of all this?



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THE CHART

	Resource-Tested	Work Related
Income	**Supplemental Security Income (SSI)** • >$2,000 resource limit • SSA Disability determination • 2023 max: $994/mo • $1 of SSI = NC Medicaid	**Social Security Disability Income (SSDI)** • Based on work record • No resource limit • SSA disability determination • No max
Health Insurance	**Medicaid** • >$2,000 resource limit • Comes with SSI in NC • Comprehensive medical insurance • Includes long-term care	**Medicare** • No resource limit • Comes with SSDI • Major medical insurance • 1st 20/80 days of long-term care

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What does this have to do with SNTs?

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An SNT is designed to be a non-countable resource.

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What does that mean?

SNTs can own $$$, and

- ***Doesn't count*** toward the $2,000 resource limit
- Assets of SNT are ***not considered to be available*** to a disabled beneficiary

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How do SNTs work?

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How do SNTs work?

Beneficiary with the disability cannot control distributions.

Cannot serve as Trustee.

Must be wholly discretionary.

(Someone else is in control.)

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The 2 Kinds of SNTs:

Self-Settled

3^{rd} Party

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Self-settled / d4A Trust

- Contains assets of the person with a disability
- Only 5 people can create it:
  1. The court
  2. Parent
  3. Grandparent
  4. Legal guardian
  5. Person with a disability (if competent)
- Distributions must be for sole benefit of the disabled beneficiary
- **Must pay back Medicaid at disabled beneficiary's death**

NOTE: You will see these most often in a guardianship or single transaction setting.

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Third-Party Trust

- Contains assets of anyone *other than* the person with a disability
- Must be purely discretionary
- No Medicaid payback is required

NOTE: You will see these most often in a trust proceeding or a decedent's estate file.

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When will SNTs come up?

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Inheritance or Unexpected Assets

Inheritance left outright to a person with a disability	Inheritance left in a "traditional" trust	New asset is discovered
• It happens more than you think • Self-settled trust, ABLE, or spend-down required	• Requires modification or decanting • Usually stays 3rd party SNT	• Deed in a drawer • Savings bond • SSA/IRS crossover reporting

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Litigation Proceeds

- Usually from a Personal Injury case
- Can be settlement or jury award
- *NOTE: These cases are often approved by the superior court judge and the SNT is created and funded at that time.*

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Relevant Statutes

Authority to create the trust

- 42 U.S.C. §1396p(d)(4)(A)
- G.S. 36C-401.2 – court
- G.S. 35A-1251(23) – guardian for incompetent adult

Authority to fund the SNT

- If person with a disability is competent, they can direct
- If person with a disability is not competent, court will need to direct

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What to Look for in an SNT

Not your job to verify that it is correctly drafted

You are not expected to be a special needs trust expert

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Instead, consider…

- Has SNT been submitted for NC Medicaid approval?
- Is there a way to amend the SNT to comply with government benefits?
- Who serves as Trustee? How can they be replaced?
- Accountability & Protection:
  - In the Trust
  - Court reporting
  - Bond

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SNT Review is a great resource

- North Carolina DHHS / Division of Health Benefits - NC Trust Unit
  - Reviews and determines that SNTs comply with state and federal regulations
  - Provide written confirmation

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Contact Info – DHHS Trust Review Team

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Questions?

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