

ELDER LAW

Eliminating Medicaid "Income Spend Downs"

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Medicaid requires that persons requesting Community or Home Care Medicaid assistance "spend down" any income above the Medicaid levels. In 2006, this level is \$692 for singles, \$900 for couples, plus a \$20 income disregard. After Medicare Part B and other health insurance premiums are paid from gross income, any amounts above this level are considered excess income and are part of the "spend down." To qualify for Medicaid every month, persons must incur medical bills in the amount equal to their "spend down" and must either pay the "spend down" directly to Medicaid or pay the medical bills. In certain circumstances, others may meet their "spend down" by using past medical bills.

As we all know the cost of living is very high in New York. Consequently, it is very difficult for individuals to live in the community at the Medicaid income levels. This fact makes it quite difficult to receive community Medicaid benefits.

Fortunately, persons over the age of 65 who would like to receive Medicaid benefits may eliminate this "spend down" in New York, by enrolling into a pooled income trust, described in Section 1917(d)(4)(C) of the Social Security Act (the Act) and Social Services Law Section 366(2)(b)(2)(iii). The NYS Association of Retarded Children, otherwise known as NYSARC currently maintains such a trust. The Trust is available to any person who is "disabled" as defined by the Social Security laws. Individuals joining the

Trust agree to deposit the amount of their "spend down" into the Trust each month. Once the Trust documents are signed, and the local Medicaid agency approves the client's enrollment in the Trust, Medicaid will reflect this approval in their budget so that the client will not have a "spend down." The money that is placed into the Trust each month can be used to pay certain bills, such as phone bills, electric bills, rent, etc., as long as the bills are in the beneficiary's name and incurred by or on behalf of said beneficiary. Bills must be sent to the Trustees each month so that payment can be made.

Practically speaking, applying for Medicaid with use of the Supplemental Needs Trust can be made in two ways.

The first option is to submit the Supplemental Needs Trust materials along with the disability packet and the Medicaid application at the initial Medicaid appointment. Medicaid will then forward the disability packet to their disability review team. Medicaid will not open the case until they receive the disability determination, which may take a few months. However, once the client is determined disabled, the Medicaid effective date will be retroactive up to three months prior to submission of the Medicaid application. For clients who want to be sure that they meet Social Security's definition of disabled, this first option might be applicable.

The second option is to first apply for Medicaid with a "spend down." After acceptance for Medicaid services, the disability packet is submitted along with the Supplemental Needs Trust materials and proof of payments. At the time of

the disability acceptance, the attorney must request that Medicaid may revise the "spend down" to zero. This option might be applicable in crisis situations where clients are paying much more than the "spend down" for private nurses and a few months of paying the "spend down" in order to get Medicaid benefits may be worth the wait for a disability determination.

There are a few ways of proving disability. If the client was disabled before they reached the age of 65, then the attorney must submit proof from Social Security that they had received them before they were 65. If the client was not disabled before reaching age 65, then they must include proof that they are disabled by submitting the DSS 486T form. The client's doctor must fill out this form. The first two pages of the form must be completed in its entirety and must be signed by the doctor. The form includes specific attachments that list medical impediments. The doctor must only fill in the attachments that apply to the client. The additional form DSS 1511 must be filled out showing the client's educational and work experience. The rules for proving disability for those over 65 are quite complicated. We recommend a thorough reading of the Social Security disability laws.

There are management costs for placing money into the Supplemental Needs Trust. There is typically an initial deposit fee along with monthly fees based on total amounts held in the trust. If the client dies, money left in the Trust stays with the trust for the other disabled beneficiaries.



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While there is additional work involved in ensuring the client meets the disability definition, the use of the pooled trust to eliminate the "spend down" for clients over age 65, is an extremely helpful tool in saving client's income. It alleviates any stress the client may have of potentially losing income that is necessary for daily living needs. Your clients will be more than grateful!

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