



HELPING HAND

An Update from the Special Needs Practice Group

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Are You Registered? Navigating the Options of Guardianship and Alternatives

A Training for Guardians, Parents, Brothers
& Sisters, Service Providers & Self-Advocates
Saturday, May 22
8:30 am - 1:00 pm
Courtyard Marriott Hotel, Marlboro, MA

Learn about guardianship and its alternatives
in this morning-long training led by 4
attorneys from FTW's Special Needs Practice
Group and special speaker clinical psychologist
Norma Medway, Psy.D.
Register now at www.ftwlaw.com under
"Seminars & Events" or contact Sara at
smurphy@ftwlaw.com or (508) 459-8021.



Spring 2010

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The Special Needs Practice Group

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Spring 2010

A MESSAGE FROM THE PRACTICE GROUP CHAIR

By Frederick M. Misilo, Jr., Esq.



The signs of spring are all around us. There is small pond near my home and every spring the small "spring peepers" can be heard announcing their presence. The herring begin to run in and around Cape Cod Bay. And the Disability Policy Collaborative held its three-day conference in Washington, D.C. covering major federal legislative issues affecting individuals with intellectual, developmental and other significant disabilities. The third day of this conference was used by conferees to visit members of Congress to discuss relevant issues. Health care reform, work force development for service providers, employment services, reforming the 811 housing program and federal incentives for special needs planning were some of the key legislative issues covered at the conference. I have been attending this conference for some time now in order to keep current on the pending issues on the federal level that may affect my clients. I'd like to report on my impressions.

First, health care reform legislation provides significant benefits for individuals with intellectual, developmental and other significant disabilities and their families. The elimination of pre-existing conditions means that thousands of persons who have been unable to be covered by private health insurance will be

covered. Elimination of life-time caps removes some of the fear of financial devastation experienced by those families who has a family member with complex medical needs. By denying insurance companies the contractual right to unilaterally terminate coverage when an insured becomes ill, the law now begins to level the playing field for consumers. And, despite the misinformation and partisanship we've been subjected to on this issue, the historical and fundamental benefits of Medicare - Parts A, B and D have NOT been affected.

For over thirty years now, I've worked in and around services, supports and benefits provided by the federal Medicaid program. The federal Medicaid program, through a complex set of rules and regulations, has been the primary funding mechanism for services for persons over 65 who require skilled nursing care and for persons under 65 who require services and supports due to functional limitations. There has been an historical bias in the federal Medicaid program which has favored funding services in institutional settings such as nursing homes. Almost everyone I have every worked with would prefer to live or have their family member live at home or in a community-based setting. Several provisions of the health care reform legislation provide the mechanisms for accomplishing this. Further, each one of us will soon have the option to elect to participate

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Top Ten “Must Know” Issues On Supplemental Security Income

By Frederick M. Misilo, Jr., Esq.
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In my practice, it is very common to receive a call about a notice from the Social Security Administration (“SSA”) concerning a reduction, elimination or other modification of Supplemental Security Income (“SSI”) benefits. This is, of course, a troubling experience for the SSI beneficiary and the representative payee. In many cases, the reduction in benefits has been caused by an honest mistake or a misunderstanding of basic eligibility issues.

In an effort to shed some light on this subject for SSI beneficiaries and SSI representative payees, I’ve compiled what I consider to be the top ten basic things to understand in order to be in the best position to avoid an unnecessary reduction or elimination of SSI benefits. This is, of course, not an all-inclusive list. There are a myriad of facts and circumstances that can give rise to a reduction of benefits or a loss of eligibility. This is my top ten list of common issues to be aware of with regard to SSI eligibility.

1. Categorical eligibility

In order to receive SSI, you must be either 65 years or considered disabled. Categorical eligibility of disability is subject to review by SSA depending on the nature of the underlying physical or mental impairment. Monthly earnings which are in excess of a certain amount give rise to a presumption that the beneficiary is no longer disabled. In 2010, this monthly amount is \$1,000 for non-blind, disabled beneficiaries. If there is a record of earned income in excess of \$1,000, it is very likely SSI benefits will be discontinued because SSA will believe that the beneficiary is no longer considered disabled.

2. Financial eligibility - Income

Financial eligibility is based on low countable income and few countable resources. Income can be earned (e.g., wages and self-employment from work activity), unearned (e.g.,

gifts, trust distributions, certain government benefits, in-kind support and maintenance, food and shelter paid by others), and deemed income from parents to a minor child, or healthy or younger spouse to a disabled or elderly spouse. To the extent money can be used for the benefit of an SSI beneficiary without becoming income, this should be done. For example, money in a trust that pays for health club membership directly to the health club is not countable income for SSI financial eligibility. But if the money was given to the SSI beneficiary and she or he paid the health club directly, the money given directly to the SSI beneficiary would be countable income.

3. Financial eligibility – Resources

Resources are all assets owned by the SSI beneficiary. Many resources are not counted – a home, a car, household goods and personal effects, and some special exceptions such as a pre-need burial contract. Generally, an SSI beneficiary may not have more than \$2,000 in assets or \$3,000 if a member of a married couple both of whom are eligible for SSI benefits. Any amount over the resource limit, however small, will result in financial ineligibility.

4. Monthly determinations of financial eligibility

SSA considers each month to be a separate eligibility period. It is not uncommon to go in and out of financial eligibility multiple times during a year due to fluctuations in the living situation, income, and variations in pay periods.

5. Regular Redeterminations

SSA staff conducts initial determinations of financial eligibility. Continuing financial eligibility is dependent on, in part, the obligation of SSI beneficiaries and/or representative payees to promptly report changes by the 10th day of the month following the month in which the change occurred. When this occurs, the benefits are adjusted in the third month.

6. Duty to report

The SSI beneficiary, or his or her Representative Payee, is under a continuing obligation to, in a timely manner, report changes that would in any way affect the claimant’s continuing eligibility for benefits, or the amount of those benefits. Items to be immediately reported include:

- a. Moving or changing address;
- b. Anyone moving into or out of the SSI beneficiary’s household;
- c. Changes in income or earnings of the SSI beneficiary, her or his spouse or her or his parents (if under age 18 years).
- d. Changes in resources of the household.
- e. Any in-kind support and maintenance assistance the SSI beneficiary begins to receive.
- f. Any income or gifts from friends or relatives.
- g. If the SSI beneficiary’s spouse or anyone in the household dies.
- h. If the SSI beneficiary gets married, separated or divorced.
- i. If the SSI beneficiary changes his or her name.
- j. If the SSI beneficiary becomes eligible for other benefits or payments, whether or not they are received.
- k. If the SSI beneficiary enters or leaves an institution, such as a hospital, nursing home, prison or jail.
- l. If the SSI beneficiary no longer lives in the United States.
- m. If a warrant has been issued for the arrest of an SSI beneficiary for a crime or attempted crime that is punishable by imprisonment for one year or longer, that is a felony.
- n. Any changes in school attendance from SSI beneficiaries under age 22.
- o. Any changes in the immigration status of the SSI beneficiary.
- p. If the SSI beneficiary no longer is disabled and is capable of engaging in work, e.g. able to engage in substantial gainful activity.
- q. If the SSI beneficiary is unable to keep a scheduled appointment with SSA.

7. Failure to report

Unless there is a specific intent not to report changes to SSA, the failure to report will involve civil penalties. Usually this involves a loss of benefits and, in some situations, a repayment order for benefits paid during the months of ineligibility. Obviously the best way to avoid any kind of civil or criminal liability is to report the changes to SSA before it finds out about the changes on its own.

8. Co-mingling of assets

All jointly owned resources are considered fully available to the SSI beneficiary. So, for example, if a Representative Payee puts the SSI beneficiary’s name on the Representative Payee’s account, the FULL amount in the joint asset is considered owned by the SSI beneficiary. If this amount goes over the \$2,000 limit applicable to an unmarried SSI beneficiary, financial eligibility will be lost.

9. Gifts from well-intentioned relatives

Any resource purchased in the name of an SSI beneficiary is considered a resource of the SSI beneficiary, even though the resource may not be in the possession of the SSI beneficiary. For example, if a well-meaning family member purchases a U.S. Savings Bond in the name of the SSI beneficiary but doesn’t tell the SSI beneficiary or the Representative Payee, the U.S. Savings Bond is still a resource which affects SSI financial eligibility.

10. Appeal Rights

All SSI beneficiaries have appeal rights when SSI is reduced or eliminated. The SSA is required to give all SSI beneficiaries and their Representative Payee notice of these rights. The time to appeal varies depending on what is being appealed. Therefore, one must NOT ignore any notice of termination of SSI benefits. Failure to file an appeal in a timely manner can have result in an unnecessary termination of benefits or loss of challenging an incorrect decision by SSA.

As noted above, this list is not exhaustive. This list is, however, illustrative of the care that must be taken by SSI beneficiaries and Representative Payees in maintaining SSI eligibility. Detailed information on SSI and the duties of Representative Payees can be found at www.socialsecurity.gov.

SAVE THE DATES!

Upcoming Trainings from FTW

Navigating Options of Guardianship & Alternatives

Sat., May 22

Courtyard Marriott Hotel
Marlborough, MA

Annual Special Needs Trust Training

Sat., October 30

Courtyard Marriott Hotel
Marlborough, MA

NEW! Transition Training - Turning 18

Sat., November 20

Courtyard Marriott Hotel
Marlborough, MA

Further details about all trainings will be posted on www.ftwlaw.com as they become available.

Not receiving invitations? Sign up by contacting Sara at smurphy@ftwlaw.com or (508) 459-8021.

MESSAGE

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in a voluntary federal long-term care insurance plan which will help pay for services and supports, when the need arises, that will enable us to live at home for as long as possible.

It is my hope and belief that as people learn more about what health care reform did and, most importantly, did not do, they will recognize its tremendous benefits. So, the next time you hear someone criticize health care reform legislation, I encourage you to try to remember the benefits this will bring to most people and, in particular, individuals with intellectual, developmental or other significant disabilities. And, if you are asked to voice your opinion on this subject, I hope you will describe its benefits.

If you would like to communicate with me on any special needs planning issue, please feel free to contact me at (508) 459-8059 or fmisilo@ftwlaw.com.

The FTW Special Needs Planning Practice Group provides legal counseling, advocacy and innovative solutions on behalf of individuals with differing abilities and their families. We strive to serve as a reliable trusted advisor committed to providing excellent service to our clients throughout their lifetimes. We recognize the importance of treating our clients with respect and dignity.

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