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**Special Needs Trusts and the New SSA Trust
Review Procedures**

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SPECIAL NEEDS TRUSTS AND THE NEW SSA TRUST REVIEW PROCEDURES

The Current Problem

A 49-year-old has had his SSI benefits suspended because his special needs trust has recently been determined as being "countable", even though the same trust was allowed as non-countable for the prior three redeterminations. This also causes Medicaid ineligibility, and severe hardship and loss of necessary medical treatment. Not receiving a response from the local office, the attorney has contacted a specialist at the SSA regional office in Dallas, who has reviewed the case and is seeking advice from Baltimore.

Ten-year-old identical twins with identical living arrangements, special needs trusts, and funding, have had one trust allowed as a non-countable resource, and the other determined to be countable by the same local office. After a number of months, the decision was reversed by the local office on redetermination.

A 62-year-old individual eligible for SSI receives an inheritance, and her attorney petitions the court for creation of a trust pursuant to 42 USC §1396p (d)(4)(A), studiously following the steps as described in the Social Security Program Operations Manual System (POMS). The local office determines the trust assets to be countable. The case is still waiting to be heard by an Administrative Law Judge at the hearing level 14 months later.

Ironically, the written determinations from the local offices initially issued to the recipient and advocate in each of these cases states that the trust is a countable resource, but does not explain the reason that it is countable. When asked, the local office representative is at a loss to immediately explain the reason for the trust being countable because the trust review analysis was made by another individual whose rationale is not available to the representative. Some of the initial decisions are changed on redetermination due to clarification or acceptance that an error was made by the trust reviewer. Other decisions are upheld and the recipient and advocate still are not clearly told the cause of the trust countability, and thus they are at an impasse in solving the problem.

Why do we have this problem with inconsistent, erroneous, or vaguely defined decisions? This has resulted largely from application of varied state laws to trusts, variations in levels of agency expertise to properly review trust terms, inconsistent application of vague policies, the general complexity and diversity of trusts, and inability of the agency to describe to the beneficiary and representative the reason for the trust being counted.

The SSA Bureaucracy

To understand the issues involving the trust review process, we first have to appreciate what it takes internally for the Social Security Administration (SSA) to improve its services.

The SSA is an immense bureaucracy with about 60,000 employees. About 60 million beneficiaries receive monthly Social Security Retirement, Disability, Survivors, and Dependents Insurance Benefits, and about 8.2 million recipients receive federal SSI program benefits, although some individuals receive benefits from both programs. The SSA central office is located in Baltimore. There are 10 regional offices located in Boston, New York, Philadelphia, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco, and Seattle. There are about 1,230 field offices directly serving beneficiaries and recipients, with 8 processing centers around the country providing support for the various Social Security administered programs. There has been about a 10% reduction in employees over the past several years.

Coordination of employee actions among the various agency divisions, and the surprising efficiency of this immense bureaucracy, is largely built upon automated computer-driven systems. However, a seemingly small problem can have huge repercussions on the SSI program. For example, on December 1, 2015, approximately 18,773 recipients did not receive their recurring monthly SSI payments. After researching the issue, the agency discovered a systems coding issue that prevented the release of the payments. The payments were correctly annotated on the Supplemental Security Income Master Record (SSR), but were not included in the payment files sent to the United States Treasury for processing. Much had to be resolved by manual input to get individuals paid, taking SSA field office representatives away from other duties.

SSI program policy is principally created and administered by the Office of Income and Security Programs (OISP) in Baltimore. However, other “stakeholders” both inside and outside the agency have policy input and influence, ranging from the Executive Office of Management and Budget, to Congressional budgetary oversight, to the Centers for Medicare and Medicaid Services (CMS), and to the SSA offices of the General Counsel and Operations, to name a few.

Uniform SSI policy is passed down from the OISP to the regional and local offices, but due to variations of state law in applying policy, such as in the legal requirements for creation of a special needs trust, the Regional General Counsel and the support and operations divisions of the regional offices may be required to research and provide state specific interpretations for application of the policy. The policy is then applied by the local offices for administration of specific cases. The contact point for recipients and representatives is always initially the local

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