



Attorneys for special needs planning.



WHAT HAPPENS WHEN I TURN 18?

Bill, age 17, suffered brain injury as a result of an automobile accident.

After six years of waiting and negotiating, Bill is about to receive a significant settlement. Bill lives with his father and mother, and his mother is his full-time caregiver. Because of the brain injury, Bill has been declared incompetent by his physician.

Since his father earns a good income as an engineer, Bill has not been able to obtain Supplemental Security Income (SSI). His father's income is deemed to Bill and makes him ineligible for SSI. However, when Bill reaches the age of 18, the deeming will stop, and Bill will be eligible for SSI if he meets the financial and medical requirements. When Bill qualifies for SSI, he may also qualify for Medicaid. While the SSI will provide Bill with a modest monthly income, the Medicaid benefit may be more important in the long run.

When Bill turns 18, his parents should go to the local Social Security Administration (SSA) office and file a claim for SSI. The SSA will make a determination as to Bill's disability, and if he meets the financial requirements, then his benefits will begin. The agency may reject the application, claiming the applicant does not have a disability. If that occurs, Bill should retain the services of an attorney specializing in Social Security disability appeals. The success rate in those appeals is more than 50 percent. Persons who persist through the appeal process are often rewarded with a disability determination and back payments.

» PARENTS NEED ADDITIONAL LEGAL AUTHORITY AT AGE 18

Until Bill reaches age 18, his parents make medical and financial decisions for him as his natural guardians; however, when Bill turns 18, even if he is not considered legally competent, his parents' legal authority as natural guardians ends.

Most states have a procedure for managing the affairs of incompetent adults, wherein a Conservator or Guardian is appointed by a court. To do so, Bill's parents or other family member must file an application with the appropriate court. In most states the application must be accompanied by certifications that Bill is incompetent from one or more physicians. A judge then will enter an order appointing the appropriate person as guardian, the guardian will have the legal authority to exercise all powers outlined in the state guardian statute. Generally, this authority includes the right to make medical decisions.

» THE AUTHORITY ALSO CARRIES THE RIGHT TO MANAGE THE WARD'S FINANCIAL AFFAIRS

Depending on who is guardian, the court may require a surety bond to ensure that the guardian does not use the money improperly. A guardian charged with the assets and income of the person with the disability must account to the court for their management of the funds on an annual or triennial basis. SSA has its own procedure to manage the Social Security benefits of a minor or adult with disabilities called "Representative Payee," which requires an application to the SSA to be appointed.

The best way to provide compassionate care and a comfortable life to your family member with special needs is to support your legal and financial decisions with reliable information and proven expertise. That's why America's finest disability attorneys are members of the Special Needs Alliance® (SNA).

As attorneys in the field of disability and public benefits law, we help to enhance your family member's quality of life. Every SNA member has the resources and legal expertise to help you maintain public benefits for your family member and develop effective estate plans and protect your assets.

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