



Distributions from Special Needs Trusts: In Kind Distributions, Credit Cards, Gift Cards, or Debit Cards

You are the trustee of a special needs trust. Your beneficiary (Beth) lives in public housing, receives SSI (Supplemental Security Income) and MA (Medical Assistance), and has just asked you for a \$200 gift card to Target so that she can buy headphones, clothes, toiletries, and some food.

Remember, a special needs trust (SNT) is a trust that is exempt for purposes of eligibility for SSI and MA even if the trust holds assets that came from the individual getting SSI or MA. “Exempt” means that the assets in the trust are not counted when determining eligibility for those means-tested programs. The assets themselves are also not counted for purposes of public housing (including Section 8) rent calculation, although the creation of the trust may affect rent. Distributions can, however, affect eligibility for all of these programs, so when you make a distribution from the trust, you need to make sure that the distribution does not affect your beneficiary’s public benefit eligibility.

Determining the most cost-efficient way to make these sorts of distributions is a dilemma most trustees face:

- *Should you give Beth the gift card?*
- *What about giving Beth cash to pay for the items?*
- *Should you just go to Target and purchase the items – or purchase them online and have them delivered? This is called “in-kind” income – goods or services purchased for the beneficiary.*
- *If Beth purchases the item with a Target credit card, can you pay the bill?*
- *What about giving Beth a debit card?*

So, let’s take a look at Beth’s benefits to decide whether or not to make the distribution she requested – and the best way to make the distribution. There are a few things to keep in mind. Receipt of cash or something that can be converted to cash is income that affects many benefits. For SSI, receipt of food or shelter reduces benefits, but no more than 1/3 of the maximum SSI payment or Federal Benefit Rate (FBR). For MA, this rule doesn’t apply. And finally, for most public housing, rent is computed as 30% of income (gross income less some allowable deductions). Income for this purpose includes cash, and payments on behalf of the tenant that are recurring. (Payment of medical expenses doesn’t count). Some

local public housing authorities may have other rules, so it's important to check. Also, remember that some disability benefit programs, including Social Security Disability Insurance (SSDI) and Medicare, don't have these rules at all.

How does this work in practice?

Effect on SSI

Assume Beth is on SSI getting the maximum FBR (\$733 in 2015 in most states).

Cash. If you give Beth cash, her SSI will be reduced dollar for dollar down to \$0.00 (not counting the first \$20). If you give Beth the \$200 in cash, her benefit will be reduced by \$180.00 (the first \$20 is disregarded) so that in the month you give her the money, she must report the distribution of cash and would be entitled to only \$553.00 in that month. So that won't work – she may as well just spend her SSI.

Gift Cards. SSI considers a gift card that can be transferred to someone else to be cash. It depends on the card's terms, but if you give Beth the Target gift card, her benefits may be reduced by the same amount as if you gave her cash.

Buy It for Her. If you purchase the toiletries, head phones and clothes for Beth, then her benefits will not be affected. (If, however, you purchase food or shelter for her, then her benefits will be reduced, dollar for dollar by up to a maximum of one-third of the FBR.) If you're a family member, fine, but if you're a professional who charges by the hour, this approach can be challenging.

Pay Beth's Credit Card Bill. If Beth uses a credit card to purchase the above items, benefits will not be reduced as long as the credit card is not used to pay for food or shelter. SSI considers Beth's purchase using a credit card to be a loan and by using trust funds to pay off the credit card, you are simply paying the loan. It may be hard for Beth to get a credit card, however, and, depending on her circumstances, may not be advisable.

Debit Cards. The debit card is tricky. Usually the amount of money subject to withdrawal by the holder of the card is considered cash, making that amount countable as income in the month it becomes available and as an asset in following months. However, some trustees set up a small account and then link that account to a debit card with restricted access by the beneficiary. There is at least one company that offers this type of limited access debit card. The beneficiary never gets the PIN to get cash withdrawals and the card will have Beth's name on it so the card cannot be transferred. The trustee can restrict where the card can be used. Unfortunately there is no way to restrict specific purchases, so if Beth uses the card at Walmart for food, she can lose up to one third of her monthly SSI benefit.

These limited access debit cards are new so there is no track record as to how SSI will treat them.

Effect on Medicaid

In some states, only if a person is eligible for SSI does the person get Medicaid. In those states – see the preceding section! If a distribution results in Beth losing all of her SSI she could lose Medicaid too.

In other states, SSI eligibility isn't required, but the beneficiary has to fall under the income limit. Depending on the state, receiving income over the limit may cause loss of Medicaid benefits, or may create a "spenddown," a kind of Medicaid deductible, where there is no coverage until medical expenses are incurred that exceed this excess income. Let's say Beth doesn't have SSI after all, but SSDI and her monthly cash benefit is \$773:

Cash. *The critical issue is the income limit. Provided Beth's total income in any month doesn't exceed the limit, she's OK for Medicaid. Let's say the limit in her state is 100% of the Federal Poverty Guidelines (FPG), currently \$973 for a single person. If Beth gets \$200 cash from the trust, she still has Medicaid ($\$773 + \$200 = \$973$). If the distribution put her over the limit, then the state's spenddown rules would kick in. Either way, though, Beth will have to report the \$200 cash distribution to her state Medicaid agency.*

Gift Cards. *Most Medicaid agencies don't seem to have a problem with a gift card, as long as they are not tracking the SSI regulation. If Beth doesn't have SSI but has SSDI instead, the gift card may work.*

Buy It for Her. *In most states, you could purchase the toiletries, headphones, clothes and even food for Beth, without a problem. The food and shelter rules only apply to SSI.*

Pay Beth's Credit Card Bill. *As with SSI, no problem here.*

Debit Cards. *As with SSI, the debit card should be used with caution. It is not strictly prohibited, nor is it sanctioned. It is unclear how MA will view Beth's ability to access the trust account using a debit card. A new, restricted card may work. If Beth has a PIN and can access cash with the card, this will be a problem.*

Effect on Public Housing

Beth lives in public housing, subsidized through the federal Section 8 program. Let's say her income is \$900 of SSDI. As discussed, most public housing calculates rent at 30% of income, and runs the calculation every year. Beth's rent starts as \$270.

Cash. *Say the trust is brand new and Beth asks for \$1,000 as a one-time distribution to buy some furniture. Onetime or sporadic gifts should not count. But if the trustee sends Beth*

\$300 cash every month, that will count as income so that her gross income is \$1,200 per month. The next time her rent is calculated, it will go up to \$360 ($30\% \times \$1200 = \360).

Buy It for Her. Beth wants basic cable TV and internet which add up to \$90 per month. The bill goes to the trust, and the trust pays the bill. Since it's a monthly item, it's income. Beth's income is now \$990/month and her rent goes up to \$297. What if instead Beth needs a psychiatrist who doesn't accept Medicare or Medicaid, and the trust pays \$300/week for therapy? Since it's a medical expense, Beth's rent doesn't change. Note that some housing authorities are counting virtually all distributions as income available to the household and increasing rent accordingly. It is important to work with the housing agency to find out its rules and make distributions carefully. When a tenant's rent is raised due to this harsh and overly broad view of income, you should challenge the rent calculation.

Gift card. The same analysis applies as with SSI and Medicaid.

Debit cards. The Housing Authority won't care that Beth has access to the account as the trust itself is not an asset. Having a debit card will have no effect on a Beth's rent. A bigger issue will be whether Beth will use it on a recurring basis and increase her rent.

Conclusion

When you become the trustee of a special needs trust, make sure you have clearly identified each public benefit program the beneficiary is receiving.

- It is almost never a good idea to give the beneficiary cash, with some exceptions.
- Gift cards should also be avoided unless it is clear the card cannot be transferred to another person. Some trustees make the beneficiary sign an agreement acknowledging that the beneficiary cannot sell the gift card, requiring the beneficiary to provide receipts of how it was used and treating any unauthorized use as a loan that must be repaid from the beneficiary's own income.
- If you pay off a credit card, make sure you get receipts for each purchase to make sure you are making payments only for the beneficiary and also not for the beneficiary's food or shelter).
- Each public housing authority may have different rules, and you may need to meet with someone from the agency to understand how distributions will be treated.
- If you give a debit card that draws on one small trust account, make sure it is not linked to a bigger account so that when the small one overdraws there is no access to the trust's funds.

Beth wants a sense of independence and involvement in how her trust is used for her benefit, and the trustee does not want to incur unnecessary administrative expenses in making purchases for Beth's benefit. There are ways to meet Beth's goals, but the benefit rules are complicated and a mistake by the trustee can result in a costly loss of valuable benefits. Talk to an attorney knowledgeable about special needs trusts if you have any questions about distributions.

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