



## **The Fundraiser Dilemma:**

### **Supporting Individuals with Disabilities Without Jeopardizing Public Benefits**

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### **Crises and Kindness**

In times of crisis, people often show just how caring humanity can be. Strangers donate time and money to individuals injured in tragic accidents. Our first instinct when we learn that someone has been hurt is often to offer financial support. Yet what feels like a generous and selfless act can, without the donor realizing it, have unintended and sometimes devastating consequences for the injured individual and their family. If the injured person receives means-tested government benefits, any extra income or assets could potentially lead to disqualification from crucial benefit programs. Crowdfunding platforms like GoFundMe, Kickstarter, and Indiegogo can provide vital support by quickly rallying funds. But if those funds aren't managed properly, they may unintentionally cause people with disabilities to lose access to essential public benefits.

### **Public Benefits**

Many individuals with disabilities receive critical public benefits. Some of these public benefits are means-tested. These include:

- Supplemental Security Income (SSI)
- Medicaid
- Medicaid Waiver Programs (long-term care)
- Federally-Assisted Housing (Section 8 housing)
- State Disability Services for Intellectual and Developmental Disabilities

"Means-tested" refers to programs that have limits on income and/or assets for eligibility. For SSI purposes, income and assets of a parent living with a child with disabilities under age 18 are deemed to the child with disabilities. It should be noted that when used in this article, "child" can refer to an adult child.

Other public benefits are not means-tested. These include:

- Social Security Disability Insurance (SSDI)
- Medicare

### **When Are Funds Considered Received?**

What matters in this analysis in terms of means-tested public benefits is whether the individual actually receives the funds.

This may seem like a simple question, but the timing can have a major effect on individuals already receiving benefits. According to the Social Security Administration's Program Operations Manual System (POMS), POMS SI 00810.030(A), income is counted at the earliest of the following:

- When the payment is received,
- When the payment is credited to the beneficiary's account, or
- When the payment is set aside for the beneficiary's use.

It may be difficult to determine when income is counted for a special needs trust. The Social Security Administration may take the position that receipt occurs when the funds are held in a separate account, pending the establishment and funding of a special needs trust.

### **Who Is the Intended Beneficiary?**

When a fundraiser is created, it is often unclear whether the beneficiary is the individual with a disability or their family members. That distinction is crucial because it determines which planning strategies must be implemented.

### **What Are the Options with Respect to Disposing of the Funds Received Through a Fundraiser?**

Depending on the amount of money raised and whether the funds are intended for the individual or their family, there are several possible options for using the funds received from the fundraiser.

### **Funds Intended for Family Members of Person with Disabilities**

If it is clear that the funds are raised for the family of a person with disabilities who is receiving means-tested public benefits, the family member can:

- *Spend the Money.* The family member can spend the money on behalf of the individual with disabilities. However, if the individual with the disability is a child under the age of 18 and is living with a parent, the funds received from the fundraiser by the parent are deemed to the child for SSI purposes and may cause a loss of means-tested public benefits. If there is to be a spend-down, it should occur during the month the funds are received to avoid counting it as a resource in the following month. Similarly, to avoid counting the funds as a resource in the following month, the spend-down should also occur during the month the funds are received.
- *Third Party Special Needs Trust.* A family member can establish a Third-Party Special Needs Trust to hold the money and use it for the special needs of the individual with disabilities. The assets in the Third Party Special Needs Trust are not counted as assets for public benefit purposes. Income is not counted if distributed directly to third parties. The advantage of a Third-Party Special Needs Trust, as opposed to a Self-Settled Special Needs Trust, is that the administration is more flexible. Distributions are not limited by the "sole benefit of" rule discussed below, and there is no Medicaid payback on the death of the beneficiary with disabilities. This option only makes sense if the fundraiser is running and generates sufficient funds to cover the costs of establishing and maintaining a trust. Otherwise, the expenses may outweigh the benefit."
- *ABLE Account.* An alternative to a Third-Party Special Needs Trust is an ABLE Account. However, an ABLE Account can only be funded by contributions up to the annual gift tax exclusion each

year. This is not a maximum per individual donor, but rather a maximum on total donations. For 2025, the maximum is \$19,000.

If the funds are raised directly for an individual with disabilities, the individual has several alternatives:

- *Self-Settled Special Needs Trust.* A Self-Settled Special Needs Trust, also known as a (d)(4)(A) Trust, may be established when donated funds are identified as clearly for the benefit of the individual with a disability. Self-Settled Special Needs Trusts are not as flexible as Third-Party Special Needs Trusts in that distributions are limited for the “sole benefit of” the trust beneficiary, and there is a Medicaid payback upon the death of the beneficiary. Again, the amount at issue should be considered when determining whether the amount in question justifies the set-up and administrative costs of the trust itself.
- *ABLE Account.* Another alternative is to establish an ABLE Account.
- *Spend Down.* The individual may also consider spending the money received in the same month.
- *Accept the Money.* The individual may simply accept the money, but this will cause a loss of means-tested public benefits.
- *Transfer the Money.* Transferring the money to a third party would likely result in a transfer of asset penalty if the beneficiary were receiving SSI or Long-Term Care Medicaid.
- *Guardianship Account.* Another possible option—if permitted under state law—is to place the funds in a guardianship account for the minor or incapacitated person. But this approach has serious drawbacks: the funds are treated as the individual’s own assets, which can cause a loss of means-tested public benefits, and it typically requires court approval, annual reporting, and ongoing oversight. For these reasons, it is rarely the best choice.

## **Pooled Trust**

If the funds raised are too much for an ABLE account but not enough to justify setting up a private trust (typically between \$200,000 and \$250,000), a Pooled Special Needs Trust can be a good solution. A Pooled Trust, also known as a (d)(4)(C) Trust, is a community trust operated by a non-profit disability organization. Funds are pooled with other members for investment purposes, but each individual has a separate subaccount. Individuals sign a Joinder Agreement. The Joinder Agreement can be used for either Third-Party or Self-Settled Trusts.

## **Conclusion**

Crises often bring out the best in people, as communities rally with compassion and generosity. The way fundraising gifts are handled can mean the difference between offering proper help and unintentionally creating hardship. Well-intentioned donations may jeopardize essential benefits unless they are directed through the right tools. The good news is that with thoughtful planning, kindness can be preserved in full. Donors can give with confidence, and families can accept support without compromising the stability of critical benefits, demonstrating that generosity and protection can work in harmony.

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