



Preserving SSI When Divorcing Parents Have a Child With Disabilities

Originally published in July 2019, the original version of this Voice® article was written by former SNA member Lee Holmes. The article was updated in 2026 with appreciation and gratitude for the original authors' work, with revisions by Jenn Crane.

Divorce is often a particularly stressful time for families. When divorcing parents have a child with disabilities, sorting through the financial issues can get complicated. [Extra care should be taken to ensure that there are no unintended financial consequences](#) and that the family is making the best use of available resources. SSI is a critical public benefit for many disabled individuals. But [child support](#), if not handled properly, can reduce the monthly SSI benefit. One planning option is to request a court to irrevocably assign the child support payments to a first-party special needs trust (SNT) for the benefit of the child in order to hold the funds in a manner that will not affect the child's eligibility for SSI.

For an adult child with disabilities to receive Supplemental Security Income (SSI), the individual generally must have countable resources below \$2,000 and limited income, with SSI payments reduced as income increases. In 2026, the maximum Federal Benefit Rate is \$994 per month, and most unearned income above the \$20 general exclusion reduces SSI dollar for dollar.

When a minor child lives with a parent, a portion of the parent's income and assets may be deemed available to the child when determining SSI financial eligibility. Financial support obligations for children without disabilities typically end when a child reaches age 18 or graduates from high school, but some states require continued child support for adult children with disabilities who cannot support themselves. Child support payments made directly to or for the benefit of a child with a disability may reduce SSI benefits and, depending on the amount and how the payments are structured, can affect eligibility.

As an example, if SSI is paying a child with disabilities \$994 per month, those funds can help the family pay for the child's shelter expenses. If a mother is granted custody when the parents divorce, the father may become obligated to pay child support. If the child support payments are paid to the mother, the payments will reduce the child's SSI benefit, shrinking the pool of potentially available funds to support the child. On the other hand, if the court requires the father to pay the support payments into a first-party SNT (also referred to as a "(d)(4)(A)" or "OBRA" trust) the child could receive the full benefit amount if otherwise eligible. A first-party SNT holds funds that "belong" to the beneficiary (the child), but since they are managed in the complete and total discretion of the trustee they aren't considered income for the purposes of SSI.

There are two primary categories of special needs trusts (SNTs): first party SNTs and third party SNTs.

When court ordered child support is involved, special care must be taken. To avoid child support payments being treated as unearned income for Supplemental Security Income (SSI) purposes, those payments typically must be irrevocably directed into a properly drafted first party SNT. This structure can help preserve SSI eligibility while ensuring that support funds remain available for the child's supplemental needs. First party SNTs are subject to a Medicaid payback requirement. Upon the beneficiary's death, the trust must reimburse any state Medicaid programs that provided benefits to the beneficiary, up to the total amount of Medicaid assistance received, before any remaining funds may pass to other beneficiaries.

By contrast, if a non custodial parent is not legally obligated to pay child support, they may voluntarily establish a third party SNT for the benefit of their child. Third party SNTs do not carry a Medicaid payback requirement, allowing the parent or other grantor to designate remainder beneficiaries who will receive any funds left in the trust at the beneficiary's death.

Regardless of the type of SNT, if the trust money isn't needed immediately, it can accumulate in the trust without affecting the child's eligibility for benefits. Later, the SNT can supplement SSI payments in order to cover the cost of anything that would benefit the child. The trustee should be mindful of how they make distributions from the trust and use the funds in a manner that does not affect the child's eligibility for benefits. For example, if disbursements are made from the trust for the child's shelter, then the child is charged with the receipt of income in the form of "in-kind support and maintenance." In-kind support and maintenance is counted against the child's monthly SSI benefit on a dollar-for-dollar basis, up to a ceiling which is referred to as the presumed maximum value. (This offset can be avoided in some cases with the help of an ABL account. See a previous Voice article: [ABLE Accounts and SNTs: How to Choose](#))

If a child develops disabilities after parents have divorced, or if the parents were never married, the attorney representing the custodial parent should incorporate the need for additional support (directed to a SNT, if appropriate) into the divorce decree or child support order. In addition, if child support payments are already being made to the custodial parent directly and not to a trust, in many cases, the child support order can be modified to irrevocably direct these payments to a first-party SNT.

Medicaid may also be affected by child support payments, but qualification for Medicaid is more state-specific than SSI benefits. In addition, laws regarding child support and divorce are unique to each state. For these reasons, divorcing parents should consult a local special needs attorney, in addition to their family law attorney, to understand how they and their child may be affected.

About this Article: We hope you find this article informative, but it is not legal advice. You should consult your own attorney, who can review your specific situation and

account for variations in state law and local practices. Laws and regulations are constantly changing, so the longer it has been since an article was written, the greater the likelihood that the article might be out of date. SNA members focus on this complex, evolving area of law. To locate a member in your state, visit [Find an Attorney](#).

Sharing Guidelines: *This article may be reproduced only with prior permission and must remain unaltered and include the author’s byline and the “About this Article” section immediately following the main content. Any redistribution must include the following credit:*

“Reprinted with permission of the Special Needs Alliance – www.specialneedsalliance.org.”

Online republication of the full article is not permitted. *To share or reference this content digitally, please do so by linking directly to the original post on the Special Needs Alliance website.*