2017 All-Ohio Legal Forum

Assisting Clients with Special Needs:
A Look at STABLE Accounts

Elder and Special Needs Law Committee
1.0 General CLE Hour/1.0 Specialization Hour

August 23 – August 25, 2017 ♦ Cleveland
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Ms. McMeechan received her BA from the University of Dayton and her JD from Cleveland State University Cleveland-Marshall College of Law. Her professional memberships include the National Academy of Elder Law Attorneys—National and Ohio Chapters, the Ohio State Bar Association (Estate, Trust, and Probate Law Section; Elder and Special Needs Law Committee), the Cleveland Metropolitan Bar Association (Estate Planning, Probate, and Trust Law Section), the Consortium Against Adult Abuse (Board Member), Hospice of the Western Reserve (Advisory Committee), Milestones Autism Resources, the Cleveland-Akron Chapter of the Society of Financial Service Professionals (Board of Directors Member), and the Ohio Living Breckenridge Village (Board of Directors). For the last 12 years, Ms. McMeechan has focused her practice on elder and special needs law, including estate and long-term care planning, estate and trust administration, probate, and guardianships. She was selected to the Crain’s Cleveland Business 2016 “Forty Under Forty” class and has been recognized as a Rising Star by Ohio Super Lawyers. Ms. McMeechan has published articles and has spoken in the areas of probate, estate planning, government benefits, and special needs trusts. Her audiences include individuals, bar associations, nonprofit organizations, and other professional organizations.
Assisting Clients with Special Needs: A Look at STABLE Accounts

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August 24, 2017

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Basic Benefit Programs

• Social Security Administration
  – Supplemental Security Income (SSI)
  – Social Security Disability Insurance (SSDI)
• Medicaid
  – Ohio Department of Job and Family Services
  – Ohio Board of Developmental Disabilities
• Medicare
Supplemental Security Income (SSI)

- Means-tested
- 2017 benefit:
  - $735.00 for individuals
  - $1,103.00 for couples
- Eligible groups:
  - Age 65 or older
  - Blind adults and children
  - Disabled adults and children

SSI – Income and Resources

- Resources:
  - $2,000.00 individual / $3,000.00 couple
  - Excluded resources: home, car, life insurance with face value of $1,500.00 or less, burial plots, personal effects
- Income:
  Unearned income must be less than $755.00 individual or $1,123.00 couple; income exclusions/disregards www.ssa.gov

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Medicaid

- Means-tested health insurance programs

- Eligible groups:
  - Low income
  - Pregnant women, infants, children
  - Older adults
  - Individuals with disabilities

Medicaid – Income and Resources

- Financial eligibility varies based on program

- Medicaid waivers and long term care:
  - Income cannot exceed $2,205.00 for individual
  - Resources cannot exceed $2,000.00 for individual
  - Special resource and income rules for spouses
Achieving a Better Life Experience (ABLE) Act of 2014

- Signed into law on December 19, 2014
- Provides tax-advantaged plans for individuals with disabilities
- Must be disabled under SSA guidelines
- Disability occurred before age 26
- Qualified ABLE accounts are exempt from taxation

ABLE Accounts Pending Legislation

- The ABLE to Work Act of 2017
  - Individuals with disabilities may deposit their earnings in addition to $14,000.00
- The ABLE Age Adjustment Act
  - Increases age requirement from 26 to 46
- The ABLE Financial Planning Act
  - Permit tax-free rollovers from 529 Plans
STABLE Accounts in Ohio

- Codified in Ohio Revised Code 113.50-113.56
- Lifetime cap: $426,000.00
- Maximum annual contribution: $14,000.00
- State income tax deduction: $2,000.00
- Exemption: up to $100,000.00 for SSI; unlimited for Medicaid

STABLE Accounts
Investment Options

- 5 investment options
  - Four (4) through Vanguard Funds
  - One (1) FDIC-insured account with Fifth Third Bank
- $2.50 per month administrative fee
- Asset-based management fees
  - 0.19% to 0.34% for Ohio Residents
  - 0.45% to 0.60% for non-Ohio Residents
STABLE Accounts
Generally

• Earnings are tax-free
• Loadable pre-paid debit card
• Anyone may contribute subject to annual limit
• Remaining funds must be paid to State of Ohio upon the death of the designated beneficiary
• Must be used for qualified disability expenses

STABLE Accounts
Opening a New Account

• Individual, parent, POA, or Guardian
• Online enrollment is free
• $50.00 minimum opening deposit
• Subsequent contributions via check or electronic transfer
• Withdrawals are free
• Can be made by transfer, check, or STABLE Card
STABLE Accounts
Qualified Disability Expenses

- Home improvement and repairs
- Adaptive equipment and assistive technology
- Therapy
- Education
- Transportation
- Housing*

* Will not reduce SSI benefit if used in the month of withdrawal

Special Needs Trusts - Types

- Self-settled (first party) trust
  - d4A (Medicaid payback)
  - d4C (pooled trust)
- Third-party (discretionary) trust
- Sole benefit trust
- Supplemental Services Trust
- Qualified Income Trust
Special Needs Trusts - Purpose

- Ensures assets are appropriately managed by a trustee
- Does not affect means-tested programs such as SSI and Medicaid
- Cannot pay for basic shelter expenses
- Can pay for “extras” such as cellular phone, additional therapies, camp, cable television, furnishings, travel, etc.

(d)(4)(A) Trust

- Contains assets of individual under age 65
- Individual is disabled under SSA guidelines
- Trust is established by individual, parent, grandparent, guardian or court
- State of Ohio receives balance upon death of trust beneficiary
- No contributions after age 65
- Authorized under 42 USC 1396p(d)(4)(A) & R.C. 5163.21(F)(1)(a)
(d)(4)(C) Trust aka Pooled Trust

- Contains assets of individual under age 65
- Individual is disabled under SSA guidelines
- Trust is established by individual, parent, grandparent, guardian or court
- State of Ohio receives balance upon death of trust beneficiary
- Managed and established by non-profit
- Authorized under 42 USC 1396p(d)(4)(C) & R.C. 5163.21(F)(3)

Pooled Trust (continued)

- The Community Fund Management Foundation with Equity Trust as Trustee. Contact (216) 736-4540 or visit www.cfmf.org

- The Ohio Community Pooled Annuity Trust or the Ohio Community Pooled Flexible Spending Trust established by the Disability Foundation Inc. Contact (937) 225-9939 or visit www.disability-foundation.org
Third Party Funded Trust

- Established by a person other than the disabled individual
- Name the disabled individual as the beneficiary
- Be funded with assets in which the disabled individual never had an interest
- Prohibit the trustee from expending funds for the disabled individual’s medical care, comfort, maintenance, health, welfare, or general well being
- R.C. 5163.21(G) & O.A.C. 5160:1-3-05.2(C)(4)

Sole Benefit Trust

- Not an improper transfer for Medicaid if transfer is to a trust for the “sole benefit” of a disabled child
- O.A.C. 5160:1-3-07.2(E)(2)(c)
- Benefit if parent needs Medicaid for long term care
- Trust principal must be exhausted over disabled beneficiary’s life expectancy
- May affect beneficiary’s SSI or Medicaid
Qualified Income Trust (QIT)

- O.A.C. 5160:1-6-03.2 & 42 USC 1396p(d)(4)(B)
- Purpose is to hold excess income over $2,205.00
- Must be irrevocable
- Only income may be deposited
- State of Ohio receives balance upon death of trust beneficiary

Supplemental Services Trust

- R.C. 5815.28 and O.A.C. 5160:1-3-05.2
- Established for the benefit of an individual who is receiving services through DD Board or Mental Health and Addiction Svcs
- Maximum amount for 2017: $246,000.00
- Supplemental services defined in O.A.C. 5122-22-01
- Requires 50% payback to services fund for individuals with developmental disabilities or mental illness
Thank You

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