



# Understanding Monetary Gift Limitations

*By Ron Runkle, Attorney*

One of the more complicated facets of financial management for individuals with special needs involves the complex relationship between the special needs trust, the giving of monetary gifts and receipt of government benefits. Individuals who are contemplating the inclusion of special needs trust language in their will, or are acting as a trustee for someone with special needs who is the beneficiary of such benefits, need to be aware of the limitations associated with monetary gifts and their potential effect on these benefits. Lack of knowledge in this important area may inadvertently lead to loss of crucial government benefits.

A beneficiary may receive government benefits and participate in programs which help provide them with items including, but not limited to, food, housing and medical/dental care. To qualify for such government benefits and programs, the beneficiary must meet specific income and asset requirements.

Benefits such as Medicaid, Supplemental Security Income (SSI) and Section 8 housing are all directly affected by additional monies that may be received by the individual with special needs. An individual receiving SSI **should not** receive money or the equivalent of money (i.e., personal or traveler's checks, money orders or money via wire transfer) for items such as food, rent and utility bills.

Under current law, individuals receiving SSI should not be given more than \$20 per month in cash gifts from any source. Any cash gifts of more than \$20 may reduce the beneficiary's SSI benefit for that particular month. Individuals wishing to make cash gifts to beneficiaries should consult with an attorney knowledgeable in the area of special needs trusts if they are unsure as to how it will affect the beneficiary's SSI benefit.

Despite the limitations which exist with regard to cash gifts, there are many other creative ways in which individuals may provide monetary gifts to a beneficiary without adversely affecting their governmental benefits.

## GIFT OPTIONS

1. Give the beneficiary movie passes, tickets to plays, musical and sporting events, amusement parks or other events. These items must be used by the individual and must not be resold. A companion who might need to assist or accompany the individual may also be included.



2. Give a gift certificate to a beauty salon or barber shop or pay the facility directly for services provided to the individual.
3. Directly pay for automobile repairs and services (car washes, oil changes, maintenance, tires, windshield wipers), auto insurance and gasoline.
4. Directly pay for accounting fees or legal fees such as the preparation of a will or power of attorney.
5. Directly pay for cleaning or maid services at the beneficiary's home.
6. Directly pay for travel expenses (i.e., taxi fare; bus passes; train, airline or cruise ship tickets; and hotel/motel room charges, excluding room service.)
7. Directly pay telephone bills and/or for the purchase of a phone.
8. Directly pay for magazine or newspaper subscriptions.
9. Directly pay for cable or satellite television subscriptions.
10. Directly pay real estate taxes, homeowner's insurance or renter's insurance. **DO NOT**, however, pay the beneficiary's rent.
11. Directly pay for home repairs, home improvements or services related to a home such as driveway repaving/repair; cleaning of furnace, ducts and gutters; roof repairs; carpet cleaning; new carpeting, windows, furnace, water heater, or water softener; widening of a door to accommodate a wheelchair; railings for bathtub and stairs; basement water sealing; pumping out a septic system; or cleaning a deck.
12. Purchase items for the beneficiary's use, including washer, dryer, television, radio, air conditioner, humidifier, microwave, stove, small kitchen appliances, DVD player, camera, vacuum cleaner, computer and computer-related peripherals and supplies, curtains/blinds/drapes, furniture, rugs, silverware, plates/glasses, cooking utensils, blankets and pillows, other household items and even holiday decorations. The trust can and should own these items. One exception to this rule is that the trust should not own any vehicles, as the trust could be sued if a vehicle is in an accident and the trust is the vehicle owner. Trustees should consult with an attorney knowledgeable in this area prior to making a vehicle purchase or lease.



13. Directly pay for membership in a health club, automobile service (AAA), book, movie or music club, museum membership, service club membership or membership in other types of clubs (not including food clubs). The beneficiary may not cancel the membership in order to receive a cash refund.
14. Directly pay for expenses relating to a pet, including the purchase of a pet, pet food, supplies and veterinary services.
15. Directly pay for non-food items available in a grocery store or drug store, including such items as soap, deodorant, bleach, paper towels, napkins, toilet paper, tissues, cleaning products, air fresheners, light bulbs, toiletries, cosmetics, hair dye products and suntan lotion.
16. Directly pay for dry-cleaning services.
17. Purchase clothing and textiles including belts, shoes, hats, scarves, purses, wallets, sunglasses, towels and linens.
18. Directly pay for a storage unit.
19. Directly pay for stationery items and stamps.
20. Directly pay for a personal care attendant.
21. Directly pay for arts and crafts materials/supplies.
22. Directly pay participation fees for park district events.
23. Give gift certificates or gift cards, but only those which are non-transferable and are from stores that do not sell food. Gift cards or certificates from stores such as Target or Wal-Mart should be avoided, as these stores also sell food. The gift card or certificate should state on it that it is non-transferable. If a beneficiary is receiving SSI, it is the government's expectation that SSI money is to be used to purchase food.

### **THINGS TO REMEMBER**

1. If a loved one uses his/her own funds or his/her credit card to pay for something that is permissible under the terms of the trust, then the trustee may reimburse that loved one if they wish. Written documentation, such as receipts to show what has been paid for, date of purchase and how much was spent should be included in the documentation. It is best if a loved one pays separately when purchasing items for the beneficiary to allow for separate receipts for recordkeeping purposes.



2. The beneficiary should never sell an item given to them by a loved one/trustee. Should this situation occur, however, the trustee should clearly and firmly instruct the beneficiary to not repeat this action, as it may jeopardize the beneficiary's government benefits.
3. A beneficiary may ask a loved one to pay for items or services that may raise moral or ethical issues, such as the purchase of cigarettes/tobacco, alcohol or adult magazines/materials.
4. Beneficiaries should not be taken to a casino where loved ones/trustees purchase chips or put money into a slot machine for the beneficiary, as this is considered a "cash equivalent", similar to giving money to the beneficiary.

#### THINGS NOT TO DO

1. Do not give the beneficiary cash, coins, money orders, personal or traveler's checks, a debit card, a prepaid credit card or a gift card or certificate to a restaurant or a store that sells food items (such as Sam's Club or Wal-Mart). Do not deposit any money into the beneficiary's personal accounts or wire transfer money.
2. Do not give the beneficiary stocks, mutual funds, treasury bonds or savings bonds, as they can be sold and converted to cash.
3. Do not buy groceries or give gift certificates or gift cards for stores that sell food.
4. Do not pay rent if the beneficiary lives in an apartment or rents a house.
5. Do not make mortgage payments or pay utility bills, including garbage collection, as payment of these items is viewed as assisting the beneficiary with shelter, which can reduce the beneficiary's government aid.
6. Do not pay medical or dental expenses for the beneficiary which are covered by government programs such as those covered by Medicaid or other programs for which the beneficiary qualifies.
7. If you are unsure about the ramifications of any financial assistance you are contemplating offering the beneficiary, seek advice from a knowledgeable attorney prior to using trust income or principal on behalf of the beneficiary. It is always better to ask first than to make a mistake that could negatively affect a beneficiary's Medicaid eligibility or other government assistance or violate the trust provisions.



## FREQUENTLY ASKED QUESTIONS

### **Can I pay a beneficiary's credit card bill?**

**Yes.** It is possible to do so, but consider this issue very carefully before proceeding. Extreme caution should be exercised before deciding to pay a beneficiary's credit card bill. Problems may arise if the beneficiary is receiving SSI. For example, if the beneficiary purchases food with his/her credit card, and then the trust pays the credit card bill in full, the trustee has then paid for the food as a part of paying the entire bill. As a general rule, it is better to simply not pay the beneficiary's credit card bill.

### **If the trustee does pay the beneficiary's credit card debt, then the trustee must:**

- a. get copies of the credit card transactions and keep very detailed records;
- b. understand and clearly document for what goods and services the credit card was used;
- c. ensure that any goods and services purchased were for the benefit of the beneficiary only;
- d. ensure that the trustee does not pay for food, including restaurant bills, catering services, hotel room service or any other food items.

### **If the beneficiary is invited to a birthday party, can the trustee pay for a gift on behalf of the beneficiary?**

**Yes.** If it is a special needs trust funded with assets from someone other than the person with special needs and it is not a payback trust, many experts believe it is acceptable to spend a small (reasonable) amount on a gift for another person if the trust allows such an expenditure. The smaller the trust fund, the more likely it is that the trustee should not purchase any gifts on behalf of the beneficiary. Always consult with an attorney knowledgeable in this area prior to using trust funds for the purchase of any gifts.

### **Can I pay for a beneficiary's hotel/motel fees when the beneficiary takes a trip?**

**Yes.** You may pay for hotel/motel expenses when the beneficiary has a temporary absence from their home. However, you cannot pay for a beneficiary to reside in a hotel or motel, as that may result in a reduction of SSI funds for the beneficiary.



By utilizing a creative approach to giving monetary gifts to individuals with special needs, it is possible to provide these individuals with an enriched quality of life that does not interfere with the important government benefits they receive on a monthly basis. Those who wish to make monetary gifts need to be mindful of the limitations that exist and should always seek professional advice when in doubt. As always, the professional and knowledgeable staff at Protected Tomorrows are available to assist in navigating this complex issue.

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