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Positive Strategies for Aging & Living with Disabilities Summer 2018

Social Security Releases Long Overdue Rule Changes for Special Needs Trusts

After years of advocacy by members of the Special Needs Alliance, the Social Security Administration ("SSA") published changes to their rules governing special needs trusts of which many Supplemental Security Income (SSI) recipients are beneficiaries. Over the past decade, our clients – and SSI recipients nationwide – received notices reducing SSI benefits to $0.00 because the SSI recipients had "excess resources." The notices did not state WHY this determination was made – or even that it had to do with the trust. Several clients were thrown into economic turmoil because the income stream they relied on ceased, and they could not pay their bills. Once we were able to ascertain the issue, the local SSA office was almost always incorrect, but the appeal process was cumbersome and we were forced to deal with the Chicago Regional office to reinstate benefits. The other option was to amend the trust to make it comply with the decision just to get the client back on benefits as soon as possible. The new rules aim to improve the process for SSA staff to review trusts, give notice to beneficiaries, and prevent, hopefully, SSI recipients losing benefits incorrectly. By these rules, and through utilizing the regional and national trust review teams, the SSA hopes that rules will be followed in a more uniform and timely manner throughout the country. Some of the most important non-procedural changes are:

1. Family members may be paid for services. A "third party provider of services" to a beneficiary *may be a family member,* non-family member, or a professional service company. Specifically:

   a. Payment for companion services, for instance sitting with the beneficiary if she or he cannot be left alone while the main caregiver is gone, or taking the beneficiary grocery shopping or to a baseball a game if he or she requires a companion, is a valid expense. Some incidental expenses are okay as well, such as paying for the companion's ticket for admission to the ball game — extra incidental expenses like hotdogs or souvenirs are not.

   b. Payment for a third party's travel expenses to accompany a trust beneficiary and provide services or assistance necessary due to the trust beneficiary's medical condition or disability are allowed as long as they are reasonable.

   c. Travel expenses may be paid for a third-party service provider to oversee the beneficiary's living arrangements if the beneficiary lives in a supportive living setting; there are slightly different rules for a trustee visiting or a service provider visiting.

   d. No medical training is required for a family member paid to provide care.

2. U.S. Military Survivor Benefits may be irrevocably assigned to first party special needs trusts and not be counted as income to offset SSI benefits.

3. A trustee may distribute trust funds to an ABLE account. *(For more information, read the "Minnesota Has An ABLE Account!" article from our Winter 2018 Newsletter at www.mnelderlaw.com/newsletter)*

4. Gift cards and gift certificates are still considered cash and should not be used; but the new rules fully endorse the use of administrator-managed prepaid cards such as the True Link card where the beneficiary is not the owner of the card.

Call and make an appointment with one of our attorneys to discuss these new rules and how they may help with the administration of a special needs trust.

Call the Minnesota Elder Law Attorneys for Assistance with:

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Seven Things You Should Know About Tax Reform

The "Tax Cuts and Jobs Act" was enacted on December 22, 2017. Here are seven key components of the new law, effective for the 2019 tax year.

1. Cut in Tax Rates

The Tax Reform bill lowered the marginal income tax rates and brackets. This means that the ranges for income at different levels were changed and the rate of tax is lower, as reflected in the table at the bottom of this page.

2. Increase in Standard Deduction

The standard deduction is the amount each taxpayer can automatically deduct from their total income when computing their income tax obligation. For years taxpayers would decide between taking the standard deduction or itemizing their deductions. The new law increases the standard deduction to $12,000 for a single filer and $24,000 for a married couple filing jointly. In other words, an individual would have to have more than $12,000 in itemized deductions to see a benefit from itemizing. If itemized deductions do not exceed this threshold, the filer is better off taking the standard deduction. This change is expected to greatly reduce the number of people who itemize.

3. Reduction in SALT Deduction

SALT is the acronym used in the tax code for "state and local taxes." The Tax Reform bill limits state and local taxes that can be deducted to a maximum of $10,000. This negatively affects taxpayers in states with high state and local taxes like California, New York, and Maryland.

4. Estate Tax Exemption

The federal estate tax exemption was raised from $5.49 million per person to $10.98 million per person. This means that married couples, with proper estate planning, can pass up to $21.96 million dollars to their heirs without paying estate taxes! The Minnesota estate tax is currently $2.4 million per person or $4.8 million per couple.

5. Charitable Donations

The tax reform bill increased the amount you can deduct for charitable donations to 60% of your income. However, because most people are expected to take the increased standard exemption and not itemize, many charities are concerned that individuals will decrease their donations because they will not be able to deduct the contribution. Some financial and tax professionals are recommending that individuals over age 70 ½ use their required minimum distribution ("RMD") to satisfy charitable gifts. If you direct your RMD to a charity, they get the full benefit of the amount and you do not have to include the amount as taxable income. A true win-win for charitable contributors over age 70 ½! (Caution: the distribution must be made directly from your account to the charity in order to qualify. Please consult your tax and/or financial professional for details.)

Tax Rate	Single Payer Bracket	Married Filing Jointly Bracket
10%	$0-$9,525	$0-$19,050
12%	$9,526-$38,700	$19,051-$77,400
22%	$38,701-$82,500	$77,401-$165,000
24%	$82,501-$157,500	$165,001-$315,000
32%	$157,501-$200,000	$315,001-$400,000
35%	$200,001-$500,000	$400,001-$600,000
37%	$500,001+	$600,001+

New lowered marginal income tax rates and brackets resulting from the Tax Reform bill.

6. Medical Expenses

The new law still allows taxpayers with high unreimbursed medical expenses to itemize and deduct medical expenses to offset income. The medical expenses must exceed 7.5% of the Adjusted Gross Income of the taxpayer(s) in order to be deducted. This is most useful for anyone paying for home care, day care, assisted living, and/or memory care. *Remember that rent paid to an assisted living or memory care facility may also be a deductible expense.*

7. Many Cuts are Temporary

While the reduction in the corporate rates are permanent, it is important to keep in mind that the individual tax provisions will expire and revert back to the old system in 2026. In short, don't get too comfortable with these changes, but figure out which provisions you can benefit from between now and 2026!

Law Change Anticipated in 2019 For Married Persons on Waiver Programs

This is an update regarding a potential law change for persons with disabilities under age 65 enrolled (or planning to enroll) in the Community Alternative Care (CAC) waiver, Community Access Disability Inclusion (CADI) waiver, Brain Injury (BI) waiver, or Developmental Disability (DD) waiver. This update does NOT apply to the Elderly Waiver program.

A provision in the Patient Protection and Affordable Care Act (ACA) effective January 1, 2014, required states, when determining eligibility of an ill married spouse, to apply spousal impoverishment rules to the under 65 waivers. The spousal impoverishment rules deem assets of the well spouse to the ill spouse in determining financial eligibility for waivered programs. Minnesota came into compliance with the ACA as of June 1, 2016 for new married applicants and as of March 1, 2017 for married recipients. Any married person enrolled on a waiver before January 1, 2014, was grandfathered under the old no spousal deeming rules and could continue as a waiver recipient without complying with the spousal impoverishment requirements. Also, any recipient on Medical Assistance for Employed Persons with Disabilities (MA-EPD) in conjunction with a waiver program was not affected by the change.

The spousal impoverishment requirements will expire December 31, 2018. The Minnesota Department of Human Services anticipates returning to the no spousal deeming rules which provide that the well spouse's assets are not counted in determining the waiver eligibility of the ill spouse. Notice advising married waiver recipients of the change is anticipated to be issued in October 2018.

Couples who would otherwise need to complete an asset reduction, annuitization of excess assets, or other asset protection strategies to qualify an ill spouse for a waiver may want to revisit with their attorney to evaluate whether to wait until after December 31, 2018 to apply for a waiver program, as it may be financially advantageous to do so.

Medical Assistance Numbers that Change in July 2018

Below are the basic Medical Assistance figures that change annually in July.

- The remedial care expense deduction was increased to **$193**.
- The minimum monthly income maintenance allowance for a community spouse increased to **$2,058** with a possible increase of up to **$3,090**, depending on the community spouse's qualifying shelter costs.
- The basic shelter allowance increased to **$617** per month.
- The monthly home maintenance allowance increased to **$1,012**.
- If an individual is receiving Elderly Waiver services and his or her gross monthly income (not including the spouse's income) does not exceed **$2,250**, the individual's monthly maintenance needs allowance (including room, board, and personal needs) will be **$1,003**. Otherwise it will be **$99**.
- The statewide average payment for skilled nursing facility care amount increased to **$7,288** per month.

LRHP Attorneys Named as 2018 Super Lawyers

2018 Super Lawyers

We are proud to announce that Laura Zdychnec, Laurie Hanson, and Cathryn Reher were selected as 2018 Super Lawyers. Selections are made using a rigorous multiphase process that includes a statewide survey of lawyers, independent research evaluation of candidates, and peer reviews by practice area. Only the top 5 percent of attorneys in Minnesota are included in the annual Super Lawyers list, and we are honored to receive this recognition from our peers.

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REVIEW OF YOUR SITUATION

If you have questions or concerns about any of the information presented in this newsletter or would like to consult with us about how the changes might affect your own circumstances, please call our office to set up an appointment with Cathryn Reher, Laurie Hanson, Laura Zdychnec or Mary Frances Price. We will be happy to meet with you to answer any questions you may have and to help you re-evaluate your particular circumstances.

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Special Needs Trusts and the True Link Prepaid VISA Card

Effective April 30, 2018, the Social Security Administration has officially recognized the True Link Prepaid Visa debit card as an allowable tool for a trustee to use when administering a special needs trust. The Social Security administration has provided clarification that if the True Link Card is owned by the trust/trustee, the card will not be counted as the beneficiary's resource, thereby not disrupting the beneficiary's Supplemental Security Income.

A True Link card provides the trustee with a way to manage and protect the beneficiary's trust funds. The True Link Card is a reloadable Visa card which enables the beneficiary to make certain purchases that are preapproved by the trustee. This card allows the beneficiary the freedom to purchase approved items and services without having the trustee present at the time of the purchase or requesting payment by the trustee. The card allows the trustee to block specific transaction types, allow only specific categories or spending, and/or allow only purchases from specific merchants.

If you already have a True Link Card and the beneficiary is the owner of the prepaid account, you must immediately call True Link and change the ownership of the card. If you do not, the card will be counted as a resource against the beneficiary and jeopardize the Social Security benefits the beneficiary is receiving. Please contact our office if you would like additional information.