



SOCIAL SECURITY

Refer to: S2D3B-1

Regional Office III
P. O. Box 8788
Philadelphia, PA 19101

April 6, 2009

Ms. Lois A. Nafziger, Esquire
40 East Airy Street
Norristown, Pennsylvania 19404

Dear Attorney Nafziger,

Thank you for providing the registration of your nonprofit organization with the Commonwealth of Pennsylvania. I am pleased to let you know that the Secured Futures Master Trust Agreement dated May 30, 2008, and the Joinder Agreement which have both been reviewed by the Social Security Administration (SSA) now meet all of the requirements for the "Medicaid" exception. As such, it would not be considered a countable resource for Supplemental Security Income (SSI) purposes.

Our review is limited to the effect that such an agreement would have on the eligibility of an SSI recipient's benefits. It should not be construed as an endorsement by the Social Security Administration regarding a particular type of arrangement. As with any type of personal decision regarding the disposition of assets, those contemplating such an arrangement should seek independent financial and legal advice.

Your agreement is subject to the new trust provisions enacted on December 14, 1999, under PL 106-169. Generally, trusts established with the assets of the individual will now be considered a resource for SSI purposes. However, there is an exception for trusts that are established under section 1917(d) (4) (C) of the Social Security Act, commonly referred to as a "pooled" trust. For this exception to apply, the trust must meet the following criteria:

- Established and managed by a non-profit association, [YES, Entity # 3811168 filed on May 18, 2008], and
- Separate accounts maintained for each beneficiary but for the purpose of investment and management the trust pools the funds [YES], and
- Be for the sole benefit of the disabled individual [YES], and
- Accounts established by the individual, parent, grandparent, legal guardian, or court [YES], and
- Contain a provision that for any amounts not retained by the trust, the trust pays to the State the amount remaining in the account up to an amount equal to the total amount of medical assistance paid on behalf of the individual. [YES]

Upon the beneficiary's death, depending on the selected preference: 1) the assets in that person's account are transferred and remain in the trust for the benefit of other persons with disabilities or 2) after repayment of Medical assistance, the remaining assets are paid per the Joinder Agreement designation. . Therefore, for SSI purposes, the trust is irrevocable and ALL of the criteria for a pooled trust are met.

MEDICAID TRUST PROVISION

The Social Security Administration (SSA) does not administer the Medicaid program; therefore, all cases which involve trusts are generally referred to the State. As I previously advised the State is responsible for evaluating the trust and determining if the individual is eligible for Medicaid (i.e., Medicaid is NOT automatic). This is true even though SSA normally makes a Medicaid determination in a Section 1634 state (which Pennsylvania is).

TRUST DISBURSEMENTS

Any distributions made from an irrevocable trust need to be reviewed by the Social Security Administration to determine whether they are considered income for SSI purposes. Specifically, distributions may be income, as discussed below:

- Cash payments made directly to the SSI recipient would be considered income.
- Payments made directly to a third party who provides food, clothing, or shelter would be considered in-kind income. However, the amount of income chargeable would be limited by the presumed maximum value (PMV, which for 2009 is \$244.66).
- Payments made directly to a third party who provides services or items other than food, clothing, or shelter would not be considered income.

It is the SSI recipient's responsibility to report any distributions received from the trust so that they can be reviewed by their local Social Security Administration office to see if they are income. Although, as the trustee, you may report any distributions directly to the Social Security office servicing your beneficiary. You also should know that SSA may periodically review the case and will verify any distributions at that time, including the date and amount of the payment, to whom paid and the purpose.

If you have any questions, please give me a call.

Sincerely,



Mandy Stokes
Philadelphia Region
SSI Program Support Team, SSA