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Latest Podcast

PCS Caregiving. Features unique caregiver issues, tips, strategies, resources, & subject matter experts.

Recording Available

Special Needs Trusts & ABLE Accounts

Upcoming Event

Moral Injury: Suicide Risk, Survivor's Guilt, & Other Clinical Manifestations
April 15, 2020

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This material is based upon work supported by the National Institute of Food and Agriculture, U.S. Department of Agriculture, and the Office of Military Family Readiness Policy, U.S. Department of Defense under Award Numbers 2015-48770-24368 and 2019-48770-30366.

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Special Needs Trusts & ABLE Accounts

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Visit the **event page** to download a copy of the presentation slides and any additional resources.

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Today's Presenter

Source: Alison Packard Law Firm

Alison M. Packard

Alison is an attorney at the Packard Law Firm in San Antonio, Texas. She focuses her practice on special needs planning, including trust and estate work, government benefits, guardianship, alternatives to guardianship, and general probate work. Alison is the mother of a 25-year-old daughter with significant special needs. The combination of Alison's personal and professional experience allow her to better understand and serve her clients who worry about their loved ones with disabilities.

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Special Needs Trusts and ABLE Accounts

Different options for individuals with disabilities

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Source: Alison Packard Law Firm

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Asset Management for Individuals with Disabilities (non-countable for government benefits)

Special Needs Trust is a trust for the benefit of an individual with disabilities

ABLE Account is a tax-advantaged savings account for an individual who was disabled before age 26

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Understanding Social Security Benefits

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SOCIAL SECURITY RETIREMENT

Monthly payment + Medicare

(Average earnings over 35 highest-paid years)

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Retirement Age

- Age 62 = lower amount
- FRA (age 67 if born after 1960) = full benefits.
- Age 70 = maximum amount

Source: Alison Packard Law Firm

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www.ssa.gov/myaccount

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What happens to the benefit
if the worker dies
or becomes disabled
before retirement age?

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(Title II)
Social Security Insurance

- Disability Benefits
- Survivor's Benefits
- Dependent's Benefits
- Childhood Disability Benefits

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Spouse

(sometimes ex-spouse)

Minor Child

Disabled Adult Child

Other "Insured" Beneficiaries

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Childhood Disability Benefits (CDB)

Disabled Adult Child (DAC)

- Over the age of 18 and not married
- Disability began before age 22 (& continuous)
- Parent who has died, retired or become disabled

Benefit: Up to 50% (living parent)

Up to 75% (deceased parent)

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SOCIAL SECURITY DISABILITY

SSDI benefit amount based on work history.

2-year wait from disability onset date before Medicare attaches to SSDI (some exceptions).

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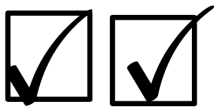
SSDI

1. Must be TECHNICALLY eligible (work credits)
2. Must be MEDICALLY determined to be disabled



Age Became Disabled	Total Credits Needed	Years of Work Needed
21-24	6	1.5
24-31	6-18	1.5 to 4.5
31-42	20	5
44	22	5.5
46	24	6
48	26	6.5
50	28	7
52	30	7.5
54	32	8
56	34	8.5
58	36	9
60	38	9.5
62+	40	10

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Not enough work credits?

Disability prevented work

Stay-at-home parents

No participation in the Social Security system.

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SUPPLEMENTAL SECURITY INCOME

Monthly payment
+ Medicaid

2020 FBR: **$783**/mo. individual;
$1,175/mo. eligible couple.

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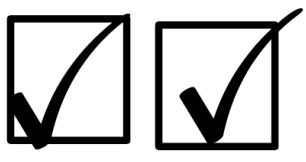
(Title XVI)
Supplemental Security Income

1. Must be MEDICALLY determined to be disabled
2. Must be TECHNICALLY (financially)eligible



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Source: Alison Packard Law Firm

Disability for Children:

Social Security considers a person to be **"disabled"** if he or she has a **medically determinable physical or mental impairment** (or combination of impairments); **and the impairment(s) results in marked and severe functional limitations;** and the impairment has lasted or is expected to last for at least one year or to result in death.

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Medical Qualification for Child
Six Domains

1. Acquiring and using information (report card)
2. Attending and completing tasks (report card)
3. Interacting/relating to others (disciplinary records)
4. Moving/manipulating objects (special education paperwork, doctors' reports - "Are they meeting milestones?"
5. Caring for self (special education paperwork)
6. Health and physical well-being (catch-all category – medical records)

MARKED LIMITATIONS IN TWO DOMAINS

or SEVERE LIMITATIONS IN ONE DOMAIN

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Source: Alison Packard Law Firm

Determination of Disability
(adult)

Unable to engage in any **substantial gainful activity** by reason of medically determinable physical or mental impairment that is expected to result in death or last at least 12 months

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5-Step Sequential Evaluation Process

1. Is claimant working?
2. Is medical condition severe?
3. Does medical condition meet or medically equal a listing?
4. Can claimant do previous work?
5. Can claimant do other work?

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SSI Technical Eligibility = Financial Eligibility

"Needs-based" program to provide basic food and shelter benefits

Limited income and assets to qualify

("Means-tested")

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4 Types of SSI Income

Earned income

Unearned income

In-kind Support and Maintenance (ISM)

Deemed income

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Limited Resources (Assets)

Resource = anything that can be converted to cash, unless excluded by law.

Under $2,000 ($3,000/couple)

- Measured 1st day of month.
- Spouse's resources count.
- Parents' resources count for minor child (not adult child).

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Resource Exclusions

- First $2,000 ($3,000 if married couple)
- Home of any value
- Car of any value
- Household goods and personal effects
- Life insurance with face value less than $1,500
- Pre-paid Funeral or Burial Plot
- Burial fund worth up to $1,500
- Retroactive SSI or SSDI payments for 9 months
- **Special Needs Trust**
- **ABLE Account**

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SPECIAL NEEDS TRUSTS

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Special Needs Trust Purpose

Supplement, not supplant (or replace) government benefits

Provides management of supplemental funds without losing government benefits

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Two Types of SNTs

First-Party SNT:

Funded with assets that belong to beneficiary

Third-Party SNT:

Funded with assets belonging to anyone other than the beneficiary

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POOLED SPECIAL NEEDS TRUSTS

First-party SNT or third-party SNT that is managed by non-profit organization as Trustee

Assets (cash only) from multiple beneficiaries are pooled together.

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QUALIFIED INCOME TRUSTS or MILLER TRUSTS

Not a type of SNT.
Trust for managing excess income to allow eligibility for nursing home Medicaid

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THIRD-PARTY SPECIAL NEEDS TRUST

For assets that do NOT belong to beneficiary

Created & funded by any **third party** (someone other than the beneficiary).

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Third-party SNTs

Eligibility

- Disabled

Assets

- Cash, stock, real estate, etc.
- Anything that does not belong to the beneficiary

No amount limit

SNT Grantor decides where assets go upon beneficiary's death

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Third-Party SNT Options

Stand-alone trust

Within another living trust

Testamentary Trust

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Advantages of Stand-alone SNT

1. More detailed trust provisions
2. Immediately available to receive donations from third-parties
3. Can establish bank account, transfer titles, begin investing funds and "practice" trust management
4. Quick payment to trust as designated beneficiary (no waiting for probate)

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FIRST-PARTY SPECIAL NEEDS TRUST

For assets that DO belong to beneficiary

Created by a **parent, grandparent, guardian, court, or capable beneficiary.**

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First-party SNTs

Eligibility

- Disabled
- Under age 65

Assets

- Anything beneficiary owns outright
- Can be funded with personal injury awards, inheritances, divorce settlements, child support for disabled adult child, military SBP, etc.

Sole benefit of disabled beneficiary

MEDICAID PAYBACK upon beneficiary's death

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CHILD SUPPORT

Lifetime child support (if allowed by state law) can be **irrevocably assigned** to first-party SNT.

This must be done by court order. An agreement to this effect will not work.

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Military Survivor Benefits

DISABLED MILITARY CHILD PROTECTION ACT

(December 2014)

- *SBP can now be assigned to a special needs trust*

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Military Survivor Benefit Plan Annuity "SBP"

Retiree selects recipient of SBP:

"Spouse only"

"Spouse and Child"

"Child Only" (with spouse's consent)

Eligibility for dependent child:

- Unmarried
- Under 18 years old (22 if full-time student)
- Incapacitated or disabled child who is incapable of self-support because of physical or mental disability which existed before 18th birthday (or before age 22 for full-time student)

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SBP Procedure

- Attorney drafts first-party SNT and provides Attorney Certification Form
- Military member obtains trust tax ID number
- Military member submits written statement electing that annuity payment be paid to SNT for his or her child.

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What can a special needs trust pay for?

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Can a Special Needs Trust pay for FOOD and SHELTER?

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Who can be Trustee?

- Parents
- Sibling
- Trusted friend
- Bank
- Trust Company
- Professional Trustee
- Non-profit organization

NOT SNT BENEFICIARY!

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Note…

TRUSTEE of
Special Needs Trust
is NOT a GUARDIAN

But can avoid
Conservatorship/
Guardianship of Estate

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Source: Alison Packard Law Firm

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Benefits of Special Needs Trust

- Provides assistance with money management.
- Protects against financial abuse and exploitation.
- Can avoid Guardianship of Estate.
- Provides supplemental funds to enhance quality of life.
- Maintains eligibility for needs-based government programs.

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ABLE ACCOUNT

The Stephen J. Beck, Jr.
Achieving a Better Life Experience
Act of 2014

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ABLE Accounts

Tax-advantaged savings accounts for individuals disabled before age 26

Purpose

Increased financial independence & protection of government benefits

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ABLE Account

Online account opened by:

- state resident* over age 18 (if competent);
- parent;
- legal guardian; or
- other fiduciary.

**Many states allow residents from other states.*

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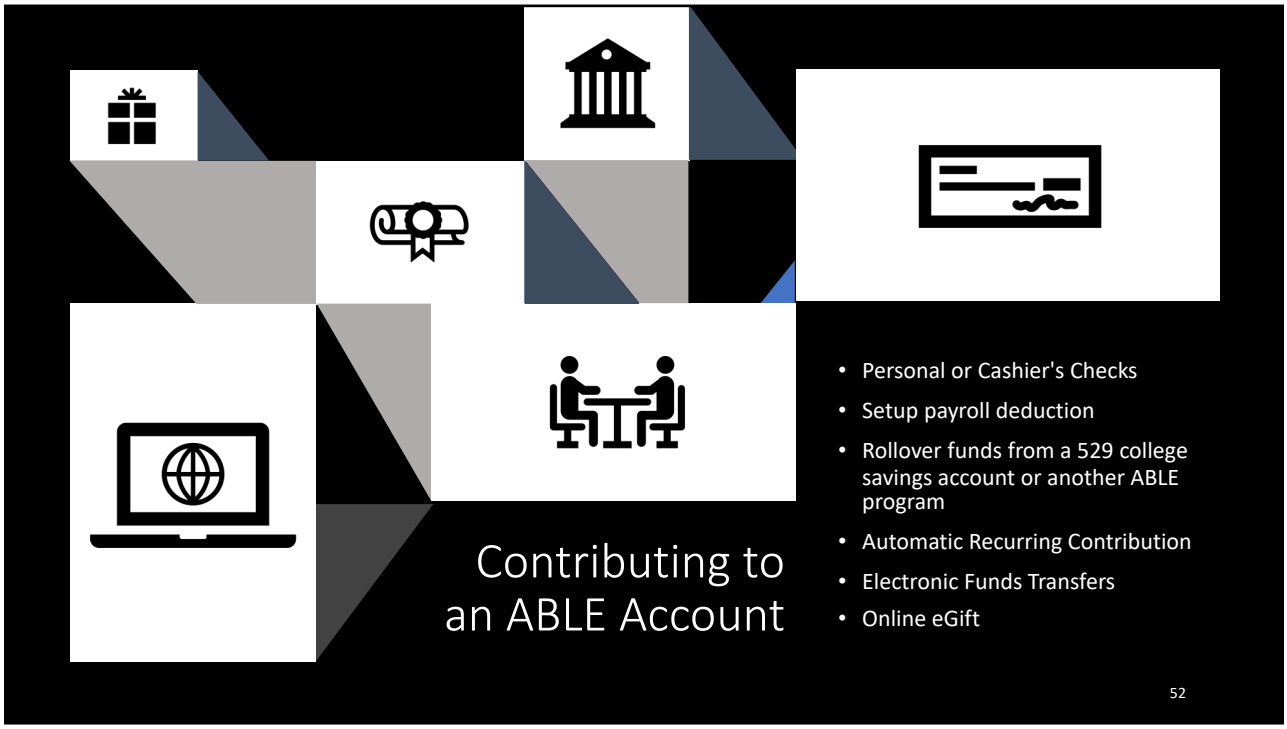

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Investment Options

- Aggressive Allocation
- Moderate Allocation
- Moderately Conservative Allocation
- FDIC-Insured Bank Savings Option

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Withdrawals from ABLE Account

- Online withdrawal process
- Request paper check (7-10 days)
- Electronic withdrawals (3-5 days)
- Transfer to personal checking or savings accounts and use debit card
- Pay bills directly from online account

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ABLE Account funds used for **Qualified Disability Expenses (QDE's)**

"that relate to the individual's disability, and are for the benefit of maintaining or improving health, independence or quality of life."

- Education & Employment training
- Housing & Transportation
- Assistive technology & personal support services
- Health, prevention & wellness
- Financial management & administrative services
- Legal fees & Expenses for oversight monitoring
- Funeral & burial
- Other expenses that might be identified by the IRS

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ABLE Accounts

Assets

- Cash only
- From anyone or anywhere
- Funds belong to beneficiary

Account Limits

- $15,000 annual contribution limit (+$12,140 in wages)
- $100,000 balance limit for SSI recipients
- $370,000 balance limit (or state limit) for Medicaid-only recipients

MEDICAID PAYBACK!

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ABLE accounts can be used to eliminate In-kind Support and Maintenance Charges

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ISM Penalty (SSI)

In-kind Support and Maintenance ("ISM") is food or shelter that somebody else provides for you.

General Rule:

If you live in another person's household for free, your SSI benefits will be reduced by **one-third** of the maximum federal benefit rate.

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Value of the One-Third (VTR) Rule

Adult disabled child receiving SSI (2020)
Lives with parents who pay for food AND shelter:

1/3 of $783 = $261 ISM charge
$783 - $261 = $522

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Presumed Maximum Value (PMV) Rule

Special needs trust pays housing for adult disabled child receiving SSI (2020):

1/3 of $783 plus $20 = ISM charge
$783 - $281 = $502

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Fair Share Exception:

SSA will not apply ISM charge when SSI recipient pays **fair share** of household expenses.

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10 SSA "POMS" ISM Expense Items

1. Food
2. Mortgage
3. Real property taxes
4. Rent
5. Heating fuel
6. Gas
7. Electricity
8. Water
9. Sewer
10. Garbage removal

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Fair Share Calculation

Angela lives at home with her parents.

- Rent: $850
- Electricity & gas: $100
- Water & sewer: $50
- Garbage collection: $25 ($75 quarterly)
- Food: $475

TOTAL $1,500

Fair share = $500 (expenses divided by 3 people living in house)

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What if SSI recipient doesn't get enough money to pay "fair share?"

1. Public Assistance Household
2. ISM Loan
3. Lease Agreement
4. **ABLE Account**

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Funds contributed to ABLE account from any source belong to the beneficiary.

Designated Beneficiary=Owner

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ABLE Account funds used for
Qualified Disability Expenses (QDE's)

"that relate to the individual's disability, and are for the benefit of maintaining or improving health, independence or quality of life."

This includes housing.

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ABLE Account & ISM

Example:

Angela lives with parents. "Fair share" = $900 per month.

- $500 SSI payment to parents each month
- $400 paid from ABLE account

Result:

Angela avoids ISM charge and receives maximum SSI.

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Report changes to SSA
by 10th day of month following change

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Comparing **Special Needs Trusts** and **ABLE Accounts**

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Comparing SNTs and ABLE Accounts

Number of Accounts

- No limit to number of SNTs; only one ABLE account

Eligibility

- Easier with SNT (disability onset can be after age 26)

Assets

No limits on type and amount of asset with SNT (as long as trustee agrees)

Medicaid Payback

- No payback with third-party SNT

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Comparing SNTs and ABLE Accounts

Taxes

- More tax-efficient with ABLE

Establishment & Fees

- No attorney needed to establish ABLE account; small maintenance fees
- SNT fees depend on Trustee (family member, pooled trust or bank trustee)

Distributions

- More flexibility with ABLE account
- Broader qualified expenses
- Trustee only with SNT

Use both together!
Third-party SNT
& ABLE Account

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Contact Information

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Source: Alison Packard Law Firm

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Evaluation & Continuing Education

This webinar has been approved for the following continuing education (CE) credits:

- 1.0 CE from the University of Texas at Austin, Steve Hicks School of Social Work for social workers, LPCs, and LMFTs
- 1.0 clock hour from the Commission for Case Manager Certification (CCMC) for case managers
- A certificate of completion

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Questions?

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Upcoming Event

The Family & Medical Leave Act (FMLA)

March 25, 2020
11:00 a.m. – 12:00 p.m. EST

Event Page:
https://militaryfamilieslearningnetwork.org/event/34441/

When you or a loved one experiences a serious health condition that requires you to take time off from work you may be eligible for Family Medical Leave Act (FMLA).

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