



## **Should I Disinherit a Child With Special Needs?**

Inexperienced or incompetent estate planning attorneys have a bad habit of telling parents of children with special needs to simply write their child out of their estate plan altogether in order to ensure that the child will qualify for government benefits if the parents pass away. While this approach might accomplish the goal of preserving government benefits, it is almost always the wrong way to help a child with special needs.

There are three main government benefits available to people with special needs - Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI) and Medicaid. A fourth benefit, Section 8 housing, is often available for people with disabilities who can't work. One of these programs, SSDI, does not set any limits on a beneficiary's unearned income or assets, so a family of a child with special needs could theoretically leave a full inheritance outright to a child who receives only SSDI with no impact on that benefit, although there are other reasons why this is a bad idea. The other three programs -- SSI, Medicaid and Section 8 -- are all means-tested programs with very strict income and asset limits, so the parents of a child who receives these benefits are rightly concerned about leaving money directly to the child because an inheritance could end access to any one of these vital programs. But simply writing a child out of an estate plan is not the right solution to this problem.

For one thing, SSI and SSDI provide small cash benefits that might not be nearly enough to support a person with special needs. In these cases, not leaving an inheritance to that child could severely limit his opportunities after the death of his parents. Secondly, government benefits are subject to the whims of Congress and the President, so benefits that fully provide for a child with special needs today could be eliminated or severely cut back in the future, at which point a child with no inheritance could be left destitute. Lastly, although SSI, Medicaid and Section 8 all have some form of asset limits, these can be avoided through appropriate special needs planning.

So instead of disinheriting a child with special needs, parents should almost always establish a special needs trust for that child's benefit. When properly drafted by a qualified special needs planner, these trusts will hold a child's inheritance so that it can be used to supplement her government assistance without causing the child to lose her benefits. Special needs trusts can also receive life insurance benefits and, in some cases, retirement funds, so that families without a lot of fully liquid resources can still provide for their children with special needs. These trusts also work well for SSDI beneficiaries or other people with special needs who may not receive any benefits at all, because they provide oversight of spending and protect the beneficiary from

financial abuse.

If you've disinherited a child with special needs in your previous estate plan, or if an estate planner is telling you that you should be leaving a child with special needs out of your plan, then it's time to sit down with Attorney D'Onofrio to discuss better options.

For more information about special needs planning in general and special needs trusts in particular, contact Attorney John D'Onofrio today.

**As a member of the Academy of Special Needs Planning, John is constantly reviewing new laws and amendments in this area of law as well as attending seminars and continuing education classes relevant to special needs planning and trusts.**

Call today to schedule a free initial consultation. Call today, get peace of mind today.

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