



Use Caution When Paying Family Caregivers

Trustees of special needs trusts are frequently approached by various family members of trust beneficiaries who would like to be paid as caregivers for the beneficiaries.

While the Social Security Administration (SSA) currently does not explicitly prohibit payment of family caregivers from special needs trusts that support Supplemental Security Income (SSI) recipients, there are plenty of other reasons why trustees should be cautious about doing so.

To begin with, many states have laws that require parents to care for their children. In those cases, it is inappropriate for trustees to compensate parents for services that they are legally required to provide to their children. These duties of support often survive past the age of majority in cases where children have lifelong special needs. However, in some cases, parents have to provide care to their children that goes far above and beyond "typical" care, and some states have passed laws allowing reimbursement for extraordinary support. Your special needs planner will be able to tell you if your state allows this type of compensation.

Secondly, there is trustee liability to consider. Caregivers are employees of the trust and must be treated as such, even if they are family members. When employing caregivers, including family caregivers, trustees must follow all state and federal wage and hour guidelines and must properly withhold the appropriate taxes from the caregiver's paychecks. In many cases, trustees, especially nonprofessional trustees, are not equipped to do this job, so they must work through agencies that actually hire the family members and are paid a premium by the trust to administer their benefits. Also, when trusts are serving as employers, there is always a risk that family members will be injured on the job, resulting in workers' compensation claims.

Finally, since the payments to family members are taxable income, some family members who are also receiving means-tested government benefits might lose those benefits or find them reduced due to their increased income. In some cases, family members would have to scale back their other sources of income in order to remain in compliance with their government benefit program's income restrictions.

For all of these reasons, it is critical that you contact your special needs planner before agreeing to hire a family member as a caregiver. While there are many reasons why family members might make the best paid caregivers, careful consideration to all of the factors surrounding the employment of family members must be taken into account before moving forward with this delicate proposition.

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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