

Social Security

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Intended Audience: All RCs/ARCs/ADs/FOs/TSCs/PSCs/OCO/ OCO-CSTs/ODAR

Originating Office: ORDP OISP

Title: Policy Clarification for Trusts

Type: AM - Admin Messages

Program: Title XVI (SSI)

Link To Reference: See References at the end of this AM.

Retention Date: November 28, 2015

A. Purpose

This administrative message provides reminders regarding our current policy on special needs trusts and clarifies our policies on court establishment of trusts and the reevaluation of previously excepted trusts.

B. Background on court ordered trusts and the reevaluation of trust resource determinations

We are clarifying our policy regarding the establishment of special needs trusts by court orders, as set out in SI 01120.203B.1.f. The special needs trust exception can be met when courts approve petitions and establish trusts by court order so long as the creation of the trust has not been completed before the order is issued by the court. In addition, the reevaluation of previously excepted trusts during posteligibility (PE) events is not necessary unless there is an amendment to the trust or a clarification or change in policy that may affect the trust resource determination.

C. Policy for exception to counting trusts that meet the requirements of section 1917(d)(4)(A) of the Social Security Act

The resource counting provisions of section 1613(e) of the Act do not apply to a trust:

- which contains the assets of an individual under age 65 and who is disabled; and

- which is established for the benefit of such individual through the actions of a parent, grandparent, legal guardian or a court; and
- which provides that the State(s) will receive all amounts remaining in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State Medicaid plan. For more information on the special needs trust exception, see SI 01120.203.

1. Who established the trust

The special needs trust exception does not apply to a trust established through the actions of the disabled individual himself or herself.

To qualify for the special needs trust exception, the assets of the disabled individual must be put into a trust established through the actions of the disabled individual's:

- parent(s);
- grandparent(s);
- legal guardian(s); or
- a court.

2. Courts establishing trusts

In the case of a special needs trust established through the actions of a court, the creation of the trust must be required by a court order for the exception in section 1917(d)(4)(A) of the Act to apply. That is the special needs trust exception can be met when courts approve petitions and establish trusts by court order, so long as the creation of the trust has not been completed before, the order is issued by the court.

Court approval of an already created special needs trust is not sufficient for the trust to qualify for the exception. The court must specifically either establish the trust or order the establishment of the trust.

a. Example of a court ordering establishment of a trust

John Jackson is a legally competent adult who inherited \$250,000 and is an SSI recipient. His sister, Justine Jackson, petitioned the court to create and order the funding of the John Jackson Special Needs Trust. Justine also provided the court with a draft of the trust document. A month later the court approved the petition and issued an order requiring the creation and funding of the trust. This trust meets the requirement in SI 01120.203B.1.f. The fact that the trust beneficiary is a competent adult and could have established the trust himself is not a factor in the resource determination.

b. Example of a court-established trust

A beneficiary wins a lawsuit in the amount of \$50,000. As part of the settlement, the judge orders the creation of a trust in order for the beneficiary to receive the \$50,000. As a direct result of this court order, a trust was created with the beneficiary's settlement money. The trust document lists the \$50,000 as the initial principal amount in Schedule A of the trust. This trust meets the requirement in SI 01120.203B.1.f.

c. Example of a court-approved trust

Jane Smith is ineligible for SSI benefits because she has a self-established special needs trust that does not meet the requirements for exception in SI 01120.203. Jane petitioned the court to establish an amended trust and to make the decision retroactive, so her original trust would become exempt from resource counting from the time of its creation.

The court approved the petition and issued a nunc pro tunc order stating that the court established the trust as of the date on which Jane Smith had previously established the trust herself. The amended trust does not meet the requirement in SI 01120.203B.1.f. The court did not establish a new trust;

it merely approved a modification of a previously existing trust.

d. Example of a court-approved trust

Dan Peters is the trust beneficiary of a special needs trust. His sister petitioned the court to establish the Dan Peters Special Needs Trust and submitted Dan's already created special needs trust to the court along with the petition. Although the court order states that it approves and establishes the trust, the court simply approved the existence of the already established special needs trust. This trust does not meet the requirement in SI 01120.203B.1.f.

3. Reopening of erroneous trust resource determinations

Do not voluntarily reopen cases where we erroneously determined that the trust was countable because the court was petitioned to establish the trust. The SSI claimant, recipient or representative payee must file an appeal or request reopening if he or she disagrees with our determination. If reopening is necessary per SI 04070.015, follow the administrative finality rules in SI 04070.010.

For pending claims or cases under review in the appeal process, use this policy clarification to assist you in making the trust resource determination.

D. Policy for reevaluating trust resource determinations

Evaluate all trusts where a claimant, recipient, or deemor alleges ownership of a trust that needs a trust resource determination (such as a new or amended trust) in all initial claims and PE events to determine the resource status of the trust.

For PE events, do not reevaluate the trust resource determination unless there is new and material evidence, such as an amendment to the trust or a clarification or change in policy that may affect the trust resource determination. However, evaluate all trust income implications, such as trust distributions and payments, if any.

For resource status changes in PE events, see SI 01120.200J.7.

E. References

SI 01120.200 Trusts - General, Including Trusts Established Prior to 1/1/00, Trusts Established with the Assets of Third Parties and Trusts Not Subject to Section 1613(e) of the Social Security Act

SI 01120.203 Exceptions to Counting Trusts Established on or after 1/1/00

EM-14026 REV Regional Centralization of SSI Trust Reviews - Business Process Using the SSI Trust Monitoring System (SSITMS)

Direct all program-related and technical questions to your RO support staff or PSC OA staff. RO support staff or PSC OA staff may refer questions or problems to their Central Office contacts