

My Child with Special Needs is turning 18, now what?

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If you have a child with special needs, you may have learned more about government benefits and services than you thought possible, but when your child turns 18 and becomes an adult, the rules change and it is very likely that you are going to need more help, guidance and expertise than you might expect.

If you want to get a head start on planning for what lies ahead, we recommend that you contact us and speak with one of our nine Certified Elder Law Attorneys who are specially trained in Social Security, Medicaid and special needs planning. In preparation for the discussion you will have and the decisions that will need to be made, here is some general information about how the laws and rules change.

When your child with special needs nears the age of 18, you will probably have numerous concerns and questions like:

1. Will my child still meet the Social Security Administration (SSA) disability criteria?
2. If my child receives Supplemental Security Income (SSI), will that benefit continue?
3. What changes will there be to Medical Assistance (MA)?
4. What, if any, legal hurdles will we as parents now face?

The change in the SSA's definition of disability is often the most unexpected and may have the biggest impact on future benefit eligibility.

Additionally, the SSI and MA considerations may loom large in your minds, and rightly so. Generally, about 1/3 of children who turn 18 lose their SSI benefits and possibly along with that, their MA eligibility.

First, let's talk about SSA disability definitions and how they change.

Disability is defined differently by the Social Security Administration (SSA) for children than it is for adults. Before the age of 18, a child is considered disabled if he or she has a mental or physical impairment that is expected to last at least 12 months and that results in "marked and severe functional limitations." At 18, however, the standard changes and the impairment must instead result in the "inability to perform any substantial gainful activity." Generally speaking, the disability standard for adults is higher, and more difficult to attain, than it is for children.

Not only must the family provide to SSA “objective medical evidence” from an “acceptable medical source” to prove the child has a disability, but the disability must be severe and consistent enough to affect the child’s ability to function in a work setting.

Determining whether your child meets the disability standard is one of the most important steps you can take to pave the way for access to government benefits during adulthood, and to facilitate future eligibility for benefits like Social Security Disability Insurance if you or your spouse retire or die, or provide the opportunity to fund an ABLE (Achieving a Better Life Experience) account if appropriate.

What about SSI and MA? SSI eligibility criteria also changes when a child turns 18. If you sought SSI benefits for your child before age 18, you know that there are two facets to eligibility, disability and finances. Since we already reviewed changes in disability criteria, let’s talk for a moment about changes to the financial criteria. Interestingly enough, it may be MORE likely that your child will qualify for SSI after the age of 18 than before.

The financial eligibility requirements for SSI also change, but unlike the disability standard, meeting the financial requirements seems to become easier. SSA now begins to look at only the individual adult child’s income and resources instead of considering the parents’ finances in the analysis. Accordingly, if a child’s disability rises to the adult standard, he or she may very well qualify financially for SSI even if he/she did not qualify as a child.

Additionally, there are situations in which your child may not lose SSI even if he or she fails to meet the new disability or financial requirements. For instance, it is possible that SSI may continue if your child participates in an approved vocational rehabilitation program or special education program that began before the age of 18.

If your child continues to regularly attend school, in 2020, \$1,870 of income a month, up to \$7,550 a year, may be excluded from your child’s countable income for SSI purposes.

Another situation your family may experience is the impact that a parent’s illness or death may have on your child’s income and benefits if that parent had a work record. The scope of this article is too limited to address each scenario, but as you can see, consulting with a Certified Elder Law Attorney may be very helpful.

Finally, since this is an article written by an attorney, what about the changes in legal status at age 18? Many parents call our office alarmed by the possibility that they will lose the ability to make legal, health care and educational decisions for their child.

By law, an 18-year-old is an adult and is presumed to be able to handle his or her own affairs unless a legal, or guardianship, proceeding has taken place that has given some or all the responsibility for the child to a guardian.

To be clear, it does not matter whether your child has the legal capacity to make his or her own decisions or sign his or her own documents. Once your child turns 18, your rights as a parent to make legal, educational and health care decisions for your child end.

So, what are your options? It depends on your child’s intellectual capacity. If he or she can understand and appreciate the decisions they are making, like giving you the power to make decisions on their behalf, your child may have the legal capacity necessary to sign their own documents. What documents? To allow you to continue assisting with financial decisions, your

child will need a General Durable Power of Attorney. To give you power to obtain your adult child's health care information and continue to assist, your child will need to sign a Health Care Power of Attorney. By signing those documents, you will be able to continue decision-making for your child without interruption and with very little expense.

If, however, your child's cognitive abilities do not rise to the necessary legal standard to allow them to execute their own legal documents, then you will need to undertake the process of becoming your child's legal guardian. The guardianship process in Pennsylvania is a court driven proceeding that generally requires hiring an attorney. Fortunately, that legal process falls within the scope of services that your Certified Elder Law Attorney offers.

This article only touches on some of the questions, concerns and legal challenges that arise when your child with a disability turns 18. There will be more issues to be addressed and decisions to be made as your child (and you) get older. We know you will do everything you can to learn and work within the system, but if you need expertise and reassurance as you enter this new phase of your child's life, please know that we are here to help!