

Leave It To The Professionals: Why You Should Use an Elder Law Attorney for your Special Needs Planning

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As a Certified Elder Law Attorney, I assist clients on a number of issues relative to their estate plans. These planning factors include expediting government benefits, and tax, and estate planning. Moreover, planning for the wholistic wellbeing of clients with disabilities is a large part of my practice and tends to present a host of separate issues and considerations.

Traditional planning can tend to be simplistic and merely include filing for a guardianship and drafting a Special Needs Trust for any potential inheritance received. While these planning methods can be helpful, I prefer to utilize techniques with more nuance which take my client's capacity and autonomy into account. This article will examine the following advanced Special Needs planning techniques:

1. Utilizing traditional estate planning documents as opposed to guardianship proceedings;
2. Employing ABLE (Achieving a Better Life Experience) accounts and the MAWD (Medical Assistance for Workers with Disabilities) program for working individuals with disabilities; and
3. Planning for potential inheritances or other lump sum windfalls.

Traditional Estate Planning Documents for Adults with Disabilities:

Appointing decision-makers and helping to ensure that clients have the proper help if they are incapacitated is a foundational principal of estate planning. This concept is lost all too often with respect to individuals with disabilities, particularly developmental and intellectual disabilities. There is an erroneous, widespread sentiment that intellectual diagnoses mean that an individual lacks the legal capacity to execute estate planning documents. This often leads to expensive, restrictive Guardianship proceedings.

As an advocate, I will take every step possible to help ensure that my clients maintain their autonomy to the fullest extent of their capabilities. This means that we must first assess whether a client can execute their own Will and Testament, Financial Power of Attorney, and Medical Power of Attorney before turning to the court system for more institutionalized decision-making.

Maintaining Supportive Benefits for Workers:

As with so many aspects of Elder Law and Disability Planning, the analysis of an individual's employment capabilities is not binary. Individuals with disabilities exist on a vast spectrum of work capabilities. With that said, the increased income that comes with employment presents a challenge for workers with disabilities. Most of our important supportive benefits programs are means-tested and carry restrictive income limits. While this used to be discouraging to individuals with disabilities, the MAWD program and ABLE accounts may be useful solutions to this quandary.

The MAWD program is a public health insurance program available for individuals with disabilities who are between the ages of 16 and 64 and who work and receive compensation, within certain limits, for their work. If a single working individual receives less than \$2,659 monthly (\$3,592 for a married couple), that individual can maintain her/his Medicaid Benefits and continue to work. This is a vital solution for a working individual with disabilities.

Concurrently, Pennsylvania's ABLE Program presents another solution for working individuals with disabilities. An ABLE account is a tax-advantaged savings account, used by eligible individuals to pay for qualified disability expenses. The account is owned by the eligible individual and designated beneficiary of the ABLE account. This functions like an IRA for an individual who is disabled by a condition that began before the individual's 26th birthday. The working individual may contribute up to \$15,000 per year with an upper limit of \$511,758 and may choose investment options and take distributions (subject to certain statutory restrictions). ABLE accounts allow workers with disabilities to contribute to a savings plan with an eye toward their own retirement or large purchases.

Blending the MAWD program and an ABLE account into a disabled individual's overall plan allows for vital autonomy and greater earning potential. As an Elder Law and Disability practitioner, these tools are vital parts of my planning strategies for individuals with disabilities who wish to work to their greatest potential.

Planning for Inheritances and Windfalls:

While planning for present autonomy and occupational needs is important, a complete plan must examine the potential for sudden wealth. Inheritances, large gifts, and personal injury settlements/awards can be disastrous for means-tested benefit recipients. Planning ahead for potential windfalls such as inheritances using Supplemental Needs Trusts or related methods are one way a qualified professional can help avoid benefits loss or interruption.

These services and planning methods can only be enacted by licensed attorneys, therefore creating and maintaining a relationship with a reputable Elder Law and Disability Planning firm gives you the best odds of preventing or mitigating benefits loss in the event of an unforeseen windfall.

In summation, planning to maintain legal autonomy, occupational freedom, and protecting benefits from windfalls are vital, often overlooked aspects of Special Needs Planning. While these circumstances present significant challenges for clients, an experienced, qualified professional will help you or your loved ones find the most effective solutions.