Crowdfunding and the Impact on Means-Tested Public Benefits

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Crowdfunding and personal fundraising are currently popular ways of raising money for a variety of causes. Crowdfunding can be used to raise venture capital, support a cause, or help a family or individual in need. However, a well-intentioned donation can wreak havoc on the public benefit eligibility of a recipient with special needs.

Unmarried individuals with disabilities who receive Supplemental Security Income "SSI" from the Social Security Administration have a countable resource limit of $2,000. Eligibility for SSI is further tied to other means-tested benefits including Medicaid benefits that cover vital healthcare and prescription expenses, Medicaid that covers long-term care services, Section 8 Housing, Nutrition Assistance (SNAP) and utility assistance. Crowdfunding can increase resources beyond the $2,000 limit, quickly resulting in a loss of vital benefits, despite the best of intentions of donors.

The Social Security Administration's regulations that control SSI have not yet caught up with the trend of crowdfunding and currently lack a written policy regarding crowdfunding sites and resources raised for SSI recipients. However, the Social Security Administration's rules regarding other countable resources suggest that crowdfunding recipients who have control over funds received may have those donations count as available resources for benefit eligibility. Due to a lack of written guidance suggesting otherwise by the Social Security Administration, even if a crowdfunding account is established and controlled by a third party, there is a possibility that the funds could still count as an available resource if not properly managed.

When creating a crowdfunding account to assist an individual with special needs, it is best to consult with a special needs planning attorney to investigate some safer options to avoid negative consequences. Important discussions regarding who should act as the administrator of the crowdfunding account and where the funds should be payable are key. With regard to the ultimate destination of the donations, some safer options include:

ESTABLISHING OR CONTRIBUTING TO AN EXISTING ABLE ACCOUNT

ABLE Accounts are tax-advantaged savings accounts for individuals with disabilities. ABLE Accounts were created as a result of the passage of the Stephen Beck Jr. Achieving a Better Life Experience Act of 2014 ("the ABLE Act"). The beneficiary of the account is the account owner, and income earned by the accounts will not be taxed. Contributions to the account can be made by any person (the account beneficiary, family, friends, a Special Needs Trust or

Pooled Trust, or even a crowdfunding site). To qualify for an ABLE Account, an individual's disability onset must have been before age 26. The individual must also be disabled by Social Security Standards.

An ABLE Account could be established prior to the crowdfunding and designated as the recipient of funds received. ABLE accounts do not affect eligibility for any federal needs-based programs including SSI and Medicaid if used properly and account balances are maintained within require limitations. However, there is currently a $15,000 limit for annual additions to an ABLE account with a $100,000 account balance limitation that is not considered in determining eligibility for SSI. Accordingly, if a crowdfunding campaign is highly successful, it could exceed the $15,000 annual addition limit, especially if the crowdfunding attempt goes viral.

SPECIAL NEEDS TRUSTS

The purpose behind a Special Needs Trust is to protect assets belonging to or set aside for an individual with disabilities from being considered countable towards resource limits for means-tested public benefits such as Medicaid and SSI. Special Needs Trusts are designed not to provide basic support, but instead to pay for comforts and enhancements that could not be paid for by public assistance funds, such as education, recreation and medical attention beyond what is required simply to maintain an individual. Special Needs Trusts are either "first party funded" meaning that assets once owed by the beneficiary with disabilities funded the trust, or are "third party funded" and were created by a third party and can only receive funds from individuals or entities other than the beneficiary with disabilities.

To a establish a First Party Created Special Needs Trust, an individual or their family can work with an attorney, or with a nonprofit pooled-trust company. Resources held in a properly drafted Special Needs Trust do not count towards resource totals for public benefits. There is also no limit on annual additions to a Special Needs Trust or cap on the holdings within a Special Needs Trust. Upon the death of the beneficiary of a First Party Created Special Needs Trust, funds remaining will be subject to payback to state Medicaid agencies who paid for healthcare benefits up to the amount of benefits received. The balance remaining in the Special Needs Trust following the pay-back may be distributed to the contingent beneficiaries named in the Trust document.

A Third Party Funded Special Needs Trust can be created and funded on behalf of a beneficiary with disabilities at any age. This type of Special Needs Trust is created and funded with resources from a third party, or third parties. This Special Needs Trust would be the ideal beneficiary of a crowdfunding account created by a third party. In the case of a Third Party Funded Special Needs Trust, no payback of Medicaid benefits is required to state Medicaid agencies if assets remain in Trust upon the death of the beneficiary. This lack of required payback allows the entire balance of the Special Needs Trust to pass to the contingent beneficiaries who are often the dependents of the individual with disabilities, or life-long caregivers. There is also no annual or lifetime limit to the amount of funds that can be held by a Special Needs Trust.

ADDITIONAL OPTIONS

Funds raised can also be earmarked for a specified need such as the purchase of an exempt vehicle, the purchase of an exempt home, or for improvements to an existing home. If payment can be made directly to a vendor that is preferable. If that is not possible, it is important that the resources are spent in a timely manner for public benefits purposes once received by an individual with a disability. For SSI purposes, excess resources must be spent by the end of the calendar month of receipt. For Pennsylvania Medicaid benefits, excess resources must be properly spent down in 15 days from the date of receipt.

Whether you are initiating a crowdfunding campaign or have plans to hold a local fundraiser to assist someone in need, doing your homework to avoid unintended consequences should be your first step.