

The Voice, *The Official Newsletter of SNA*

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Welcome!

You are reading *The Voice*, the e-mail newsletter of The Special Needs Alliance. This installment was written by Special Needs Alliance member Raymon B. Harvey, who is an [AV-rated](#) sole practitioner in Little Rock, Arkansas. You can read more about Mr. Harvey, and his practice, at [his office's website](#), which provides additional information about Special Needs Trusts and related issues such as [Guardianship](#) and [Conservatorship](#), [Medicaid eligibility](#), and other topics of concern to those with disabilities and their caretaker families.

An Introduction to "In-kind Support and Maintenance"



Introduction: Special Needs Trusts can themselves be complicated and confusing. The rules governing their creation and administration, and the effect on public benefits eligibility of specific trust payments, can be even more complicated. Let us try to simplify some of the rules, particularly those governing provision of food and shelter to a Special Needs Trust beneficiary.

Background: A "Special Needs" Trust is one established for the benefit of an individual with a disability -- as that term is defined by federal Social Security rules. Such a trust is not counted as an available resource for a Supplemental Security Income (SSI) or Medicaid recipient. Its primary purpose -- whether funded by gifts from others or with the beneficiary's own money -- is to improve the individual's quality of life without the loss of public benefits.

Where the assets come from is critical and determine how SSI and Medicaid will view the trust, but many of the rules are the same regardless of the source of funds. While the trust is not a resource, payments from the trust may be counted as income to the beneficiary depending on how and to whom the payments are made.

If a disbursement is made in cash directly to the beneficiary, the money received is unearned income that will reduce the individual's monthly SSI benefit dollar-for-dollar, after considering any applicable exclusion. Of course, if the beneficiary's income is from Social Security Disability, or from some other Social Security program that is not means-tested (and there are several), then payments to the beneficiary will not have any effect on the Social Security payments. That does not mean that such payments are a good idea, however, as they might still affect

Medicaid eligibility. Besides, if the beneficiary's disability has an effect on his or her ability to handle money, outright distributions may cause problems beyond their effect on benefits eligibility.

Direct payments to others: If disbursements are made from the trust to third parties that result in the beneficiary receiving non-cash items (other than food or shelter), the beneficiary receives in-kind income if the items would not be a partially or totally excluded non-liquid resource if retained into the month after the month of receipt. Take as an example a trust which buys a car for the beneficiary, even though the beneficiary's spouse already has a car which is being excluded for SSI eligibility calculations. The second car is income in the month of receipt since it would not be an excluded resource in the following month.

In-kind Support and Maintenance (ISM): If disbursements are made from the trust to third parties that result in the individual receiving food or shelter, the individual is charged with the receipt of income in the form of "in-kind support and maintenance." Rather than causing a dollar-for-dollar reduction in benefits for the value of the ISM payment, however, it is valued at no more than the "presumed maximum value," a concept unique to SSI regulations. The presumed maximum value is calculated each year for all SSI beneficiaries by dividing the maximum SSI payment (\$637 in 2008 for a single person, and \$955 for a married couple) by three, and then adding \$20.00. That means that the "presumed maximum value" for 2008 is \$232.33 for an individual and \$338.33 for a couple.

For purposes of calculating this reduction, the notion of "shelter" which might be provided by in-kind payments includes **only** the following household operating expenses:

- Mortgage payments
- Home insurance (but only if it is required by the terms of a mortgage)
- Rent
- Real property taxes
- Heating fuel
- Gas
- Electricity
- Water
- Sewer, and
- Garbage removal.

Other in-kind payments from the trust: Other direct payments from the trust to providers do not result in the receipt of support and maintenance and are not treated as income for SSI purposes. Those disbursements might include payments for educational expenses, therapy, medical services not covered by Medicaid, phone bills, recreation, entertainment, therapy, companionship, and many other beneficial services.

If payments from the trust to a third party result in the beneficiary receiving non-cash items other than food or shelter, they will not be counted as income when the item would become a totally or partially excluded non-liquid resource if retained into the month after the month of receipt. For example, if the trust purchases a computer for the beneficiary, there would be no affect on SSI or Medicaid benefits. Since the computer would be excluded from resources as household goods in the following month, the computer is not income. The same principles would apply to purchases of furniture, adaptive or assistive devices,

clothing and other goods.

Summary: This explanation of the "in-kind support and maintenance" rules may seem confusing, but the application and effect are straightforward. If a Special Needs Trust purchases services directly, the purchase will not cause a reduction or loss of the beneficiary's SSI benefits. If the trust purchases goods that are exempt from being counted as assets, there should again be no effect. If, however, the trust pays for housing-related expenses or food, there may be a reduction in benefits and, in some limited cases, even a complete loss of eligibility. Similarly, purchase of non-exempt assets that could be converted to food or shelter will cause problems.

Of course, the best choice for the trustee of a Special Needs Trust is to seek competent legal advice before making a decision about paying any in-kind goods or services. A good special needs attorney will be able to explain the effect of proposed payments not only to the trustee, but also to the beneficiary and his or her family, who may have expectations that simply can not be met given the constraints of public benefits eligibility rules.

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