

The Voice, *The Official Newsletter of SNA*

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Welcome!

You are reading *The Voice*, a newsletter published by The Special Needs Alliance. Our purpose is to provide information--and answers--about special needs planning for family members and professionals. We hope this newsletter helps you. We invite your questions, suggestions and comments (please understand that we can not give individualized legal advice on the basis of an e-mail inquiry). We also encourage you to forward our newsletter to others who might benefit from the information here, or who might have similar questions.

Beware of UTMA Accounts



Paul's son Mark has cerebral palsy. When Mark turned 18 he was approved for Supplemental Security Income (SSI) payments and Medicaid, with Paul as the representative payee for his son's benefits. When Paul applied for Mark's SSI he disclosed to the Social Security Administration that Mark had a Uniform Transfers to Minors Act account (UTMA) with a \$30,000 balance. Social Security assured Paul that the UTMA account would not affect Mark's eligibility for benefits.

Mark is now 25 years old. Last week Paul got a notice from the Social Security Administration that Mark's SSI is being cut off because of his UTMA account and that Mark would have to repay two years of benefits totaling over \$14,000. Paul was stunned. He had disclosed the UTMA account when Mark first applied for SSI and he had been diligent about complying with all of SSI's rules.

What is a UTMA account? UTMA accounts are controlled by state law. South Carolina and Vermont still call this type of account by an earlier name: Uniform Gifts to Minors Act (UGMA) accounts. Both types of accounts are designed to hold money that is given to a minor child. In Mark's case the UTMA account was opened up when he was a baby to hold periodic cash gifts made by his grandparents. Though parents and grandparents knew at the time that Mark would have a disability throughout his life, they were hopeful that the money would help make him more independent and comfortable, and that his functional abilities might improve as he grew up.

A UTMA account is legally owned by the child and even lists the child's Social Security number. The funds are controlled by a "custodian," but the custodian is required to hold and use the money for the benefit of the child. The account resembles a simplified trust arrangement, with its terms set by state statutes. State law determines when the UTMA account will terminate. Depending on the state and the circumstances,

the account terminates when the child reaches the age specified in the state law, usually either 18 or 21. The balance in the UTMA account is then legally available to the (now adult) child.

How does SSI treat UTMA accounts? Social Security's Program Operation Manual System (POMS) provides that Social Security will not count a UTMA account as an available resource for SSI purposes until the account is considered available under state law ([POMS 01120.205](#)). Interest or dividend income generated from a UTMA account is also not counted as income of the SSI recipient. Of course, if the custodian makes a distribution of cash to the child from the account the payment would be counted as income to the child for that month. SSI does count the UTMA account as an available asset in the month in which the child reaches the age at which state law requires that the account be terminated.

Unfortunately the Social Security Administration does not remind parents of a child approaching majority that a UTMA account may soon be counted as an available asset. In Mark's case his UTMA account of \$30,000 made him ineligible for SSI and Medicaid as of his twenty-first birthday, when the law in his state mandated that the account become available. Because the Social Security Administration determined that Paul as the representative payee was not "at fault" in creating the overpayment, the recovery was limited to two years instead of four. It took Social Security four years to make the connection, but once the determination was made the ineligibility was retroactive to Mark's twenty-first birthday.

Missed opportunity: Before Mark turned 21 the UTMA account could have been transferred into a special needs trust for Mark's benefit. This would most likely be a "Medicaid payback" special needs trust since the trust would be funded with Mark's own money—even though the funds originally came from Mark's grandparents. In some circumstances (and states), it may even be possible to avoid the necessity of establishing a payback trust at all, but the key is to decide how to proceed before the child reaches the age set by state law.

In Mark's case, after Paul repays the Social Security Administration for the overpayment he can still transfer the remaining funds into a payback trust so that Mark can re-qualify for SSI as of the first of the next month. Paul can also consider the possibility of transferring the UTMA balance to a pooled trust; given the amount of money and Mark's young age, it may be more cost-efficient to take this approach. It may even be possible to make purchases for Mark's benefit (like adaptive equipment, or the dental work that Mark needs) that could eliminate the need for a trust at all. Unfortunately, in Mark's case it is too late to save the \$14,000 that the Social Security Administration will claim for its overpayment.

Lesson learned: Parents, financial advisors and legal counsel should do a check of any UTMA accounts for a child approaching the age of majority in cases of disability. It is easy to avoid a serious eligibility issue with important government benefits by transferring the UTMA account into a special needs trust before the account is available to the child. As always, competent legal advice can help navigate the tricky (and not always obvious) eligibility rules and procedures.

About the Author: [Barbara A. Isenhour](#) has practiced law for over 33 years, focusing on the legal issues facing the elderly and disabled persons of all ages. She is a member of the [Special Needs Alliance](#).

Barbara was selected as one of the city's best attorneys in Seattle Magazine for three years and has been selected as a "Super Lawyer" in Law and Politics Magazine for the past five years. She and her husband have three sons. The younger twin boys attend college in California.

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