

SUPPLEMENTAL NEEDS TRUST:
TRUSTEE GUIDELINES

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The purpose of this memorandum is to provide some guidance for the trustee's administration of a Supplemental Needs Trust.

The Trust is specifically designed to protect the continued eligibility for public benefits, most importantly Medical Assistance (M.A.) and Supplemental Social Security Income (S.S.I.), while providing for "supplemental needs" of the beneficiary. Such needs are those items which are in addition to and which are not provided by any public benefit program. Continued eligibility for public benefits will require close supervision on the part of the trustee to ensure that applicable asset and income limits are not exceeded as a result of Trust distributions.

I. GENERAL ELIGIBILITY RULES.

Generally one who is eligible for public assistance under the Supplemental Security Income ("SSI") program will also automatically qualify for medical cover under Medical Assistance ("MA") when he/she receives SSI benefits.

The SSI program is a "needs-based" cash assistance program which is designed to assure a minimum level of income to people who are aged, blind or disabled and who have limited income and assets. In order to initially qualify and remain eligible to participate under the program, the recipient cannot own countable assets (called "resources") in excess of \$2,000.00 and cannot have unearned income in excess of the Federal benefit rate, which as of January 2004 is \$564.00 per month. If either of these maximum levels is exceeded by distributions from the Trust, or some other cause, SSI eligibility and MA eligibility can be lost.

"Resources" for purposes of the SSI program include cash, or other liquid assets and any non-exempt property that an individual owns and which could be converted to be used for that individual's support and maintenance (i.e., food, clothing and shelter). Resources do not include certain exempt items such as a home, an accessible vehicle or one valued at less than \$4,500.00, personal property less than \$2,000.00, prepaid burial or cemetery lots. Although the value of the assets held in the name of the Supplemental Needs Trust will far exceed resource limitation, applicable government regulations provide that assets of the Supplemental Needs Trust will not be deemed to be "available" as a resource for SSI and MA, if the SSI recipient has no ability to revoke the trust or control any distributions from it. The Supplemental Needs Trust has been designed so that the beneficiary has neither the ability to control or terminate the Trust nor the ability to compel or control any distributions. Consequently, the assets will not be deemed "available" and therefore will not be countable resources under the SSI and MA programs.

The amount of a person's **income** is also used to determine both eligibility and SSI and MA. For SSI purposes, income is anything an individual receives during a calendar month and can be used to meet his or her needs for food, clothing or shelter. Income may be in cash or

“in-kind”. In-kind income is when someone receives actual items of food, clothing or shelter or something that can be used to get such items, rather than cash. The receipt of any type of income will generally reduce SSI benefits on a dollar-for-dollar basis. Thus, if the trustee were to simply give \$100.00 to the beneficiary from the Trust, or alternatively, bought them \$100.00 of groceries, the cash and the groceries would both be treated as income and SSI benefits would be reduced by \$100.00. If total cash distributions from the trust and other sources exceeded \$564.00 in any given month, the beneficiary would not receive any SSI payments and would be ineligible for MA coverage during that month.

II. TRUST DISTRIBUTIONS.

In order to appreciate the wants and needs of the beneficiary, the trustee must stay in close contact with the beneficiary and their social worker, residential staff, vocational staff and family. Accordingly, the trustee must be mindful of the eligibility rules and be diligent and consistent with respect to Trust distributions. Note the following guidelines:

1. **The Trust should never distribute cash.** This is true regardless of whether the beneficiary uses the cash for food, clothing and shelter, or for supplemental, non-support needs, or any item.
2. **Do not use funds from the Trust to purchase food, clothing, or shelter.** These items will constitute “in-kind” income and would most likely result in a 1/3 reduction of the SSI funds. Therefore, use SSI benefits for food, shelter and clothing, and use distributions from the Trust for “non-necessities”, such as the phone bill, cable bill, entertainment, vacation, medical or dental items not covered by MA.
3. **Distributions from the Trust should be made directly to the supplier of the goods and services.** Pay for the goods or services directly out of the Trust checking account and then list goods as a trust asset.
4. **Distributions related to medical needs which are not already provided by MA will always be exempt from consideration as income under the SSI program and most other public programs.** The purchase of any good or medical service not already available through MA or another public benefit program order will not cause a reduction in SSI benefit levels.

Note the following examples of the above guidelines:

- A. If the beneficiary, or the Trust owns a home, the home is an exempt resource, and improvements and repairs to the home should not constitute income. Pay directly the plumber, painter or other contractor to make any necessary repairs to the house, or someone to take care of the lawn, shovel snow, etc.;

B. If the beneficiary is interested in attending school or other adult educational program, pay the tuition, purchase books and supplies and arrange for transportation with funds from the Trust;

C. If the beneficiary enjoys reading, movies or music, purchase the latest books/tapes/CDs, enroll in a book-of-the-month club or obtain subscriptions to favorite magazines;

D. The Trust could be used for entertainment purposes, including: trips to the movies, plays, museums and sporting events, the purchase of a new television, VCR, CD or sound system; and the installation of cable or satellite TV; hobby - supplies may be purchased related to the hobby;

E. If the beneficiary enjoys travel, Trust funds could be used for a vacation trip or to visit friends or relatives (provided that the tickets cannot be converted to cash). Trust funds can be used to send a chaperone along on the trip;

F. Trust funds could also be used to provide transportation: purchase and maintain a car, if the beneficiary has a driver's license or requires an accessible vehicle, or cab fare or for bus passes. Payments for car repairs, gas, oil changes and upkeep may be paid by the Trust;

G. Household goods and other items of personal property could also be purchased with a portion of the Trust funds listed as a Trust asset and used by the beneficiary;

H. Bills for items such as cleaning, supplies and paper products and services, such as telephone expenses, cable TV, internet access, etc. and other items not constituting food, clothing or shelter, could also be paid with funds from the Trust;

I. Services, dental care, physical therapy, massages, a private room in the hospital, and other medical costs, to the extent not covered by MA, could be paid for with Trust funds;

J. Almost any other purpose not covered by SSI, MA or other government program, provided that funds are not used directly or indirectly for food, clothing or shelter.

III. TRUSTEE'S DUTY OF CARE.

The trustee has certain duties, sometimes called "fiduciary" duties. This means the trustee will be held to a higher standard of conduct than the average person when dealing with matters related to the Trust. In general, **the trustee must carry out their duties with reasonable care, and never put their own personal interests above the beneficiary**. For example, the trustee is prohibited from borrowing funds from the Trust or from using any Trust funds for personal benefit, such as to pay their own bills, invest in a business in which the Trust is involved. **The beneficiary has no control over the Trust, it is the trustee's sole and absolute discretion**

which controls the Trust. However, this discretion must **always be exercised in the best interest of the beneficiary.**

Fiduciary duties include the following:

1. Receive funds from every source, except the beneficiary or their spouse;
2. Deposit and invest funds in accounts in the name and tax identification number of the Trust;
3. Make proper disbursements according to the limitations of the Trust;
4. Make periodic accountings if required by the Trust;
5. File State and Federal Income Tax Returns and pay any taxes due;
6. Pay any other taxes and maintenance required to maintain Trust assets;
7. Understanding the needs of the beneficiary and the status of the SSI and MA.

IV. INVESTMENTS

The trustee is required to follow the “**prudent investor**” standard in managing the Trust, which requires careful and accurate accounting of principal, income, disbursements, and investments based on any limitations as required by the Trust, a “reasonable person standard”, and awareness of the purpose of the Trust and the needs of the beneficiary. Trustees can be held personally liable for failure to observe the correct standards in any of the above areas. Trustees are **not allowed to “self-deal”** in handling of the funds. Self-dealing means that the trustee should not use the Trust funds in any way that will provide any enhancement to the trustee or other related party other than compensation for services rendered as allowed by the Trust.

Trust **investments must always be reasonable.** Any investment in real or personal property should be secured by some type of written and publicly recorded collateral security document. Unsecured loans, especially to a fiduciary, or close relation or business entity of a fiduciary, are almost always suspect. If property is purchased for use by the beneficiary, there must be a reasonable expectation that the property will be used by the beneficiary in the approximate percentage owned by the Trust, or that it is an investment that will yield a reasonable return in appreciation or income. If not so used, it may be reasonable and perhaps required that rent be charged and collected from other parties.

Sometimes successor beneficiaries or other interested party become concerned about the trustee’s current handling of the Trust. If the trustee, or other interested party, has a situation of which they are unsure, a petition can always be filed in the Probate Court for “instructions” or

approval from the court. This will generally exonerate the trustee from any future liability relating to that issue.

V. ESTABLISHING ACCOUNTS

Banks and other financial institutions may vary in the way that they handle trusts and accounts set up in the name of the Trust. The name on the account should always **use the Trust name** and should always **use the Trust tax identification number** and signify that the trustee is holding the funds in a fiduciary capacity with reference to the Trust document. If there are co-trustees, they should decide if they wish to have any restrictions on depositing or withdrawing funds from an account such as use of multiple signatures, maximum withdrawals, wire or telephone transfers, and conditions for other transactions. The trustee should never use his or her own social security number on the account, nor the beneficiary's social security number. The bank or investment company may ask to see an original of the Trust, but have them copy it and return the original to you.

VI. REPORTS AND DISCLOSURE.

The use of the Supplemental Needs Trust is authorized by law and the trustee should always feel free to provide whatever information required by SSI or MA or IRS.

Social Security Administration: You may need to provide the Social Security Administration with information concerning the existence and operation of the Supplemental Needs Trust. The SSI program may thereafter require periodic reports reflecting how trust distributions were ultimately made. It is important for you to keep careful records with respect to the goods, services and payments made from the Trust. Keep copies of all checks and receipts and journal to record the transactions and bank statements. It is best to maintain these records until the Trust is terminated.

MA: The above comments relative to Social Security also apply to MA (administered by the county) and will assist in any reports requested by the county to maintain MA.

Internal Revenue Service: By April 15 of each year, the trustee is required to file Form 1041 U.S. Fiduciary Income Tax Return for any calendar year in which the Trust earns income in excess of \$500.00 (this figure may change per IRS Rules). A Minnesota income tax return is also required. The trustee should consult with a certified public accountant to discuss accounting procedures and income tax filing requirements for the Trust. The fees of the CPA and the tax due should be paid by the Trust.

For IRS purposes, the Supplemental Needs Trust is known as a "Complex Trust" because the income, generally, is not distributed to the beneficiary. It is generally recommended that the income of the Trust (ex. interest and dividends) be shown on the Trust's tax return rather than the beneficiary's. Even though the beneficiary will likely be in a lower "tax bracket" than the

Trust, if the income is shown on the beneficiary's tax return it could adversely effect their eligibility for SSI and MA.

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