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## SPECIAL BENEFITS FOR MILITARY FAMILIES – ELECT WITH CARE BY SANDRA L. SMITH

Many families of children with disabilities are also military families. One benefit that may be available for these children is the military Survivor Benefit Plan (SBP). The SBP will pay up to 55% of the military member's retirement pay to a spouse or a dependent child when the retiree dies. The benefit is adjusted annually for inflation. The military member also has the option to select a lower benefit at a lower cost and has the option to choose coverage for only the spouse, spouse and children, or only children.

If a member wants to decline SBP coverage entirely, then the member can only do that with the written consent of the spouse. If a member selects spouse and children coverage, then the children do not receive SBP until after the death of the military retiree and the retiree's spouse. The member's military retirement pay is reduced by approximately 6.5% for spousal coverage, and the member pays approximately \$20 per month for dependent children coverage.

The SBP can be an excellent benefit for children with disabilities, but families need to be aware of all the options for their children before deciding to elect child coverage. Receipt of the SBP benefit may result in the child losing other important disability benefits.

Children with disabilities are usually eligible for Supplemental Security Income (SSI) at age 18 if they meet the income and asset requirements for these benefits. SSI provides funds for food and shelter. Children with disabilities that occurred prior to age 22 may also be eligible for Social Security on the record of a disabled, retired, or deceased parent. The SBP can provide an additional source of income for the child with disabilities. If a child with disabilities is receiving SSI, then the SSI payment is reduced dollar-for-dollar by unearned income. Therefore if the child also receives the SBP, then SSI could be reduced or eliminated.

Because the child is the SBP beneficiary, the SBP funds cannot be paid directly into a special needs trust in order to avoid receipt of the monthly income by the child. Congress would have to amend the U.S. Code in order for the SBP payments to be paid directly into a trust without the payment being considered as received by the child.

Children with disabilities who are receiving SSI are also able to receive Medicaid, including Medicaid waiver services. Medicaid can provide for supervision, job training and assistance in addition to health benefits. In military families, a child with disabilities who is over the age 18 can be designated an incapacitated dependent with the filing of a DD Form 137-5. This designation can also permit the child to be eligible for health care benefits under TRICARE.

TRICARE and Medicaid complement each other, and together they can provide a wide array of services and benefits for the child with disabilities. Some states have an absolute income cap for Medicaid benefits while other states allow a recipient to spend down excess income on medical services in order to qualify for benefits. If a child's SBP income is too high, then the child may not be able to receive Medicaid or Medicaid waiver services.

Military families should consider all benefits that will be available to their children with disabilities, and decide before the military member retires whether or not SBP is a good fit for their child. This is particularly true if the family wants the child to receive Medicaid waiver services in the community. Unfortunately, once the SBP beneficiary payments start, there is no way to stop them.

If the military member has already made an SBP election involving the child with disabilities, then the member can apply to the Board for Correction of Military Records for the member's respective service in order to modify the SBP election. This application must be made while the military member is still alive, using the DD Form 149. The member will have to justify the change in the election. For example, the member might explain that the member did not understand that electing coverage for the child with disabilities could adversely impact the child's eligibility for other important benefits.

A completed DD Form 149 should be sent to the service address listed on the form. The Board for Correction of Military Records meets periodically to review and act on such requests.

Military families who are eligible to receive SBP and have children with disabilities should work with a qualified attorney to ensure that they are fully educated on all benefits for which their children are eligible. It is critical that parents do their homework and make the appropriate decisions before the military member retires.

This article has appeared in The Voice®, which is the email newsletter of the Special Needs Alliance and is reprinted with their permission.

Oast & Hook attorney Andrew Hook is a member of the Special Needs Alliance whose website is [www.specialneedsalliance.org](http://www.specialneedsalliance.org). The attorneys at Oast & Hook can assist clients with their estate, financial, insurance, long-term care, veterans' benefits, and special needs planning issues.

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### Ask Allie

O&H: Allie, we've heard that there it is possible to find a perfect career for one's cat. Please tell us about it.

Allie: Sure! The book, *Careers for Your Cat*, by Ann Dziemianowicz, has several ideas to help keep cats gainfully employed. Pet-lifestyle expert Sandy Robins consulted this resource to help her cat Fudge find a new career after she ended her job blogging for CatChannel.com. She had her cat take the Meowers-Briggs Career/Personality Test offered in the book, and Fudge considered becoming a museum curator or Egyptologist. As it turned out, Fudge's next career came by way of a phone call from Friskies, who was looking for cinematographers to make the first movie filmed by cats. Fudge just had to wear a video cam on her collar for a few hours a day. The result was *The Cat Diaries*, which is an ongoing success on YouTube. She also made a documentary of how she made the film for CatChannel. Fudge is now going to open a feline film school. Video cams for cats are now on Amazon.com, and Fudge will happily dole out filming advice to other cats via her e-mail address at [sandyrobinsonline@gmail.com](mailto:sandyrobinsonline@gmail.com). Sounds like a good idea! I wear a collar; maybe my mom will let me do a video too! Off to go check. See you next week!

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