

OAST & HOOK

Offices in
Portsmouth, Virginia
and
Virginia Beach, Virginia
Tel: 757-399-7506
Fax: 757-397-1267
E-mail: eln@oasthook.com



Member, National Academy
of Elder Law Attorneys

INSIDE THIS ISSUE

- Virginia Medicaid
Manual Update Assists
Trustees of Special
Needs Trusts
- Announcements
- Oast & Hook
- Distribution of This
Newsletter

Editor
Sandra L. Smith
Attorney at Law

VIRGINIA MEDICAID MANUAL UPDATE ASSISTS TRUSTEES OF SPECIAL NEEDS TRUSTS

The Commonwealth of Virginia Department of Social Services recently released Medicaid Manual Volume XIII Transmittal #83 that contains changes, clarifications, and updates to the Medicaid Manual. One clarification contained in Transmittal #83 regarding disbursements will be useful to trustees of special needs trusts (SNTs).

Before discussing the Medicaid Manual, a brief review of SNTs is in order. There are two types of SNTs: self-settled SNTs and third-party SNTs. A self-settled trust is funded with the assets of the disabled beneficiary, and the trust must be established by the beneficiary's parent, grandparent, legal guardian, or by a court. The beneficiary must be under age 65 when the trust is established and funded. The trust must be irrevocable and state that at the death of the beneficiary, Medicaid is reimbursed for the amount of medical assistance benefits provided to the beneficiary (payback requirement). These trusts are typically funded by personal injury settlements or judgments, and by inheritances received by the disabled beneficiary. A third-party special needs trust is typically established by a parent or other family member of the disabled beneficiary, and it is funded with the assets of the parent or family member. The trust must not permit the beneficiary to revoke the trust or to direct the trustee to make distributions from the trust. If self-settled or third-party SNTs meet these requirements, then they will not be considered resources to the disabled beneficiary for either Supplemental Security Income (SSI) or Medicaid eligibility purposes. Further, transfers of the disabled beneficiary's assets to a self-settled SNT will not trigger a period of ineligibility for either SSI or Medicaid. (Because the beneficiary's assets are not used to fund a third-party SNT, transfer penalties are not an issue for the beneficiary).

Although properly drafted SNTs are not resources for SSI and Medicaid eligibility purposes, distributions from these trusts could reduce or disrupt the disabled beneficiary's eligibility for these benefits. For example, if a trustee distributes cash to a beneficiary, then the cash is counted as unearned income for both SSI and Medicaid purposes and cause the beneficiary to lose benefits because of excess income. For this reason, Oast & Hook advises trustees of SNTs never to distribute cash to a beneficiary, even if it is to reimburse the beneficiary for an otherwise authorized expenditure. On the other hand, disbursements made by the trustee to a third party that result in the individual receiving something other than food, shelter, or clothing (for Medicaid purposes) or food and shelter (for SSI purposes), are not considered income. Examples of such disbursements are those made for transportation, education, cable television, Internet access, telephone service, and items such as furniture and appliances.

Disbursements from an SNT for food or shelter present issues for SSI eligibility. When a trustee makes disbursements for a beneficiary's food or shelter (even if the disbursement is made directly to a third party), the beneficiary is considered to have received income in the form of in-kind support and maintenance (ISM), and the income is valued under the presumed maximum value (PMV) rule. Generally, the beneficiary's SSI payment may be reduced by one-third in the month in which the ISM is received. The beneficiary does not, however, lose SSI completely.

Prior to the release of Transmittal #83, Virginia Medicaid Manual Section S1120.200 (E)(1)(b) stated: "Food, clothing, or shelter received as a result of disbursements from the trust by the trustee to a third party are income in the form of in-kind support and maintenance." The Medicaid Manual section did not explain the impact of such disbursements, and, as a result, trustees have been reluctant to make such disbursements for fear of jeopardizing the beneficiary's Medicaid eligibility. Transmittal #83 clarified this section, which now reads "Food, clothing, or shelter received as a result of disbursements from the trust by the trustee to a third party are income in the form of in-kind support and maintenance *and are not counted for Medicaid purposes.*" (Italics added.) Further, in the summary of significant changes section of the cover letter for Transmittal #83, it states, in subchapter S1120, page 17, "that disbursements from a trust in the form of in-kind support and maintenance are not counted as income."

This clarification is significant because if a beneficiary is receiving both SSI and Medicaid, then the only impact of disbursements for food and shelter (for SSI purposes) and food, clothing and shelter (for Medicaid purposes) will be a reduction in SSI in the month of receipt of the ISM. The reason for the difference in treatment of disbursements for clothing under the two programs is that the SSI rules were changed to eliminate disbursements for clothing as ISM; the Medicaid rules have not been changed to follow the new SSI rule. Because disbursements for clothing no longer have an effect on Medicaid eligibility, this difference is transparent.

Oast & Hook assists families with establishing both self-settled and third-party SNTs. Oast & Hook also advises and assists trustees with making trust distributions, so the distributions do not impact the disabled beneficiary's eligibility for SSI and Medicaid.

Announcements

Oast & Hook is pleased to announce that it is a sponsor for the 17th Annual Alzheimer's Education Conference to be held at Old Dominion University on June 7th and 8th. Oast & Hook will also present a workshop entitled "Legal Issues for Families Facing Alzheimer's Disease" on June 7th and a workshop entitled "Current Legal Issues – Competency Issues and the Law" on June 8th. For more information about this conference, please call the Alzheimer's Association at 757-459-2405 or visit their website at www.alzseva.org.

William Oast and Sandra Smith will be the guest speakers on the "Ask the Expert" show on WTAR radio (850 AM) from 8:00 a.m. to 9:00 a.m. on May 27th.

Oast & Hook is pleased to announce its sponsorship of a series on WHRO-TV entitled "Boomers: Redefining Life After 50." This week's episode is "Sex, Love and Relationships." It will be aired at 4:30 p.m., Saturday, May 20th.

Oast & Hook

Oast & Hook is an elder law firm. We represent older persons, disabled persons, their families, and their advocates. The practice of elder law includes estate planning, investment and insurance advice, estate and trust administration, powers of attorney, advance medical directives, titling of assets and designations of beneficiaries, guardianships, conservatorships, and public entitlements such as Medicaid, Medicare, Social Security, and SSI, disability planning, income tax planning and preparation, bill paying, account management and reporting, care management, and fiduciary services. We also handle litigation involving these issues, such as will contests and estate administration disputes. For more information about Oast & Hook, please visit our website at www.oasthook.com.

Distribution of This Newsletter

Oast & Hook encourages you to share this newsletter with anyone who is interested in issues pertaining to the elderly, the disabled and their advocates. The information in this newsletter may be copied and distributed, without charge and without permission, but with appropriate citation to Oast & Hook, P.C. If you are interested in a free subscription to the *Elder Law News*, then please e-mail us at eln@oasthook.com, telephone us at 757-399-7506, or fax us at 757-397-1267.

Copyright © 2006 by Oast & Hook, P.C.

This newsletter is not intended as a substitute for legal counsel. While every precaution has been taken to make this newsletter accurate, we assume no responsibility for errors, omissions, or damages resulting from the use of the information in this newsletter.

This newsletter is produced to be sent electronically. If we currently fax you a copy of the Elder Law News but you prefer to receive it by e-mail, then please contact us at: eln@oasthook.com.

If you would like to be removed from our Elder Law News distribution list, please e-mail us at eln@oasthook.com, telephone us at 757-399-7506, or fax us at 757-397-1267.