

Unique Issues for Special Needs Trusts in California and CalABLE

[Dante Allen,](#)

Executive Director CalABLE

[Stephen Dale, Esq.](#)

Trustee, the Golden State Pooled Trust
Attorney, Dale Law Firm



Meet Our Presenter

Stephen W. Dale

- Disability rights advocate
- Family worked in California's state hospitals for 3 generations.
- Worked as a psychiatric technician in mental health facilities for 17 years
- Interned at DREDF while going to law school working primarily on ADA access cases
- Recipient of the prestigious 2010 Theresa Foundation Award and 2007 NAELA Powley Award
- Board of the ARC of California
- Trustee of the Golden State Pooled Trust
- Charter Member of the Special Needs Alliance
- Public service website:
www.dalelawfirm.com
- Golden State Pooled Trust www.gspt.org





Qualified Disability Expenses

Qualified disability expenses (QDEs) are expenses related to the blindness or disability of the designated beneficiary and for the benefit of the designated beneficiary. In general, a QDE includes, but is not limited to, an expense for:

Education;

Food;

Housing;

Transportation;

Employment training and support;

Assistive technology and related services;

- Personal support services;
- Health;
- Prevention and wellness;
- Financial management and administrative services;
- Legal fees;
- Expenses for ABL account oversight and monitoring;
- Funeral and burial; and,
- **Basic living expenses.**

Medi-Cal and the Payback

Medi-Cal Recovery	ABLE Account	3 rd Party SNT
Medi-Cal used for medical purposes after age 55 that passes through probate	<p><u>Use of an ABLE Program Outside of California</u> The amount of any such Medi-Cal payback is calculated based on amounts paid by Medi-Cal</p> <p><u>Use of CalABLE Account</u> No Medi-Cal payback</p>	No Medi-Cal payback

Who can Establish and Manage an ABLE Account

The only persons that can establish or have signature authority over an ABLE Account are

- **the eligible individual,**
 - **the eligible individual's agent under a valid power of attorney or if none,**
 - **his or her parent or.**
 - **legal guardian or conservator.**
- Unless the ABLE beneficiary lacks capacity, they have first priority to manage the account regardless of who established the account or if signature authority was delegated by a power of attorney.

Medicaid Lien

- Upon the death of the designated beneficiary, funds remaining in the ABLE account, after payment of all outstanding qualified disability expenses, **must be used to** reimburse the State(s) for Medical Assistance (Medicaid) benefits that the designated beneficiary received, **if the State(s) files(s) a claim for reimbursement.**



ABLE Accounts and Housing for SSI Recipients

Types of SSI Income

Unearned Income	Earned Income	In-Kind Support & Maintenance
Includes cash gifts, payments from annuities and pensions, alimony & support payments, dividends, interest, rents, awards and payment from other benefit programs.	Consists of wages, royalties, net earnings from self-employment, and any honoraria received for services rendered.	Actual receipt of food or shelter, or something that can be used to get one of these.
Reduces benefits dollar for dollar after the first \$20	Reduces benefits one dollar for every two dollars after the first \$65 earned monthly	Reduces benefits dollar for dollar up to a maximum of \$281 (2020)

10 Items Used to Determine ISM

- When computing household operating expenses for ISM or the following 10 items are the only ones used in the applicable computations.
 - Food
 - Mortgage (including property insurance)
 - Real property taxes (less any tax rebate/credit)
 - Rent
 - Heating fuel
 - Gas
 - Electricity
 - Water
 - Sewer
 - Garbage removal



Do Payments from an ABLE Account for Shelter Cause an ISM Reduction for SSI Recipients?

- The Social Security Administration recently directed that distributions from an ABLE account do not count as income regardless of whether the distributions are for non-housing QDEs, housing QDEs, or non-qualified expenses.
- They also directed that Social Security Administration reviewers are not to scrutinize how an ABLE Account is used with limited exceptions.
- This is a program under the Department of Treasury (IRS), not the Social Security Administration, CMS (Medicaid), or HUD

SNT to ABLE for Rent

- Belinda has been disabled from birth and receives \$943.72 a month in SSI.
- She is a beneficiary of a special needs trust.
- She would like to move to a nicer apartment that would cost \$1,000 a month.
- She will need some assistance in order to make the move



SNT to ABLE for Rent

- If Bob - her trustee were to give her \$1,000 a month directly it would be counted as unearned income and eliminate her SSI completely.
- If Bob were to pay the landlord directly – the payments would count as ISM and her benefits would be reduced by \$281.
- If instead Bob were to contribute \$1,000 a month to her CalABLE Account, and in turn the funds from the account were to pay the landlord then there would be no reduction of SSI.





ABLE Accounts, Special Needs and Pooled Trust Comparison Chart from the National ABLE Resource Center

www.ablenrc.org/wp-content/uploads/2020/05/2020_SNT_ABLE_comparison_08.20.pdf

Eligibility

Protected Savings Option Comparison Chart

Comparison Criteria	ABLE	Pooled Trust (First or Third Party)	Special Needs Trust (First Party)	Special Needs Trust (Third Party)
Eligibility	Onset of a disability prior to age 26.	Disability or moderate impairment. First Party Account: established before age 65. Third Party Account: no age limitation.	Disability: established before age 65.	No limitations.
Allowed Accounts	One (1)	May have multiple first and third party accounts.	May have multiple first party accounts.	May have multiple third party accounts.
Account Opened By	Account opened at any age by person with a disability, parent, legal guardian or agent under power of attorney.	First Party: Account set up by the beneficiary, a parent, grandparent, court or legal guardian or by someone with authority to act for the beneficiary (e.g., an agent under a power of attorney). Third Party: Account set	Account set up by the beneficiary, a parent, grandparent, court or legal guardian or by someone with authority to act for the beneficiary (e.g., an agent under a power of attorney).	Account set up by grantor (anyone but the beneficiary).

Allowable Use	Qualified disability expenses including food, housing, education, transportation, emergency needs, employment training and support, assistive technology, personal support services, health care expenses, financial management, administrative services, funeral and burial and other expenses determined by ABLE account owner; assistance by legal guardian or power of attorney allowable.	As determined by trust administrator; food or housing expenses may generate special issues. Administrator provides oversight and manages funds.	As determined by trustee; food or housing expenses may generate special issues, as may any direct distributions to the beneficiary.	As determined by trustee; no required limitation on food or housing expenses, but may cause reduction in some benefits. Direct distributions to the beneficiary may reduce or eliminate eligibility.
Startup Cost	Initial minimum deposit between \$0 to \$50.	Typically \$200 - \$1,000.	Attorney fees vary, and may include court costs; \$1,000s.	Attorney fees vary \$100s - \$1,000s.
Minimum Contribution	Average \$0 - \$50.	Typically \$2,000 - \$10,000.	No limitation, but costs make it inefficient for smaller	No limitation.

Allowable Uses

Contributions

Comparison Criteria	ABLE	Pooled Trust (First or Third Party)	Special Needs Trust (First Party)	Special Needs Trust (Third Party)
Annual Contribution Limit	\$15,000 total from owner, family, friends, 529 College Savings Account, or a Pooled Trust or Special Needs Trust.	No limit.	No limit.	No limit.
Additional Contributions Allowed	Additional contributions by ABLE owners are permitted from earnings when the beneficiary or their employer do not contribute into an employer-sponsored retirement account in the calendar year. In those cases, additional amounts may be as much as \$12,490. The increase for residents of Alaska may be up to \$15,600, and residents of Hawaii up to \$14,380 (2020).	Some pooled accounts allow for beneficiary to contribute earnings.	Third party funds should not be added to a first party Special Needs Trust.	Other family members may contribute additional amounts to a third party Special Needs Trust, but no funds of the beneficiary may be added.

Management Fees and Methods of Distributions

Comparison Criteria	ABLE	Pooled Trust (First or Third Party)	Special Needs Trust (First Party)	Special Needs Trust (Third Party)
Maximum Holdings	Varies by ABLE plan \$235,000 - \$529,000.	NA	NA	NA
Ongoing Management Fees	Fees vary with each ABLE plan. Costs are nominal and average \$0 - \$60 per calendar year.	<p>Average \$200+.</p> <p>Enrollment and administration fees are almost always higher than those associated with ABLE accounts, but lower than for-profit businesses that offer trust services.</p> <p>Management fees for a pooled SNT can be less than 1% on an annual basis. A fee schedule should be available.</p>	<p>Often 1% - 2%.</p> <p>Enrollment and administration fees are likely higher than those associated with ABLE accounts, but are often lower than for-profit businesses that offer trust services. Many first party trusts require court oversight, which may add expenses.</p>	<p>Often 1% - 2%.</p> <p>Trustee's fees and associated costs are almost certainly higher than those associated with ABLE accounts, but may be lower than for-profit businesses that offer trust services.</p>
Debit Card or Checks	Availability of prepaid debit cards, checking options and contribution gift cards; fees vary by ABLE plan.	Yes – often arranged through TrueLink or similar card.	Yes – often arranged through TrueLink or similar card.	Yes – often arranged through TrueLink or similar card.

Income Rules for SSI Recipients

Comparison Criteria	ABLE	Pooled Trust (First or Third Party)	Special Needs Trust (First Party)	Special Needs Trust (Third Party)
SSI Income	<p>Disbursements may be made for qualified expenses such as shelter expenses, rent, mortgage payments, insurance, taxes, utilities and food without resulting in a one-third loss of SSI due to unearned income.</p> <p>However, money taken out for rent, housing expenses, or housing-related expenses must be paid in the same month as the distribution or it is counted as a resource.</p>	<p>Cash, including gift cards or certificates paid directly from the trust to the SSI recipient, is unearned income and will reduce SSI.</p> <p>Food or shelter or shelter costs such as rent, mortgage payments, taxes and utilities received as a disbursement by a trustee / administrator to a third party is considered in-kind support for SSI and can reduce SSI benefits, but not necessarily by the amount of the distribution.</p> <p>Some disbursements from the trust that are not cash to the individual, or third party payments that are not in-kind</p>	<p>Cash, including gift cards or certificates paid directly from the trust to the individual, is unearned income.</p> <p>Food or shelter or shelter costs such as rent, mortgage payments, taxes and utilities received as a disbursement by a trustee / administrator to a third party is in-kind support and maintenance under the presumed maximum value rule.</p> <p>Some disbursements from the trust that are not cash to the individual or third party payments that are not in-kind support and maintenance are not countable income. Examples are educational</p>	<p>When trust principal is not a resource, disbursements from the trust may or may not be income depending on the nature of the disbursement.</p> <p>Cash, including gift cards or certificates paid directly from the trust to the individual, is unearned income.</p> <p>Food or shelter or shelter costs such as rent, mortgage payments, taxes and utilities received as a disbursement by a trustee / administrator to a third party is considered in-kind support for SSI and can reduce SSI benefits unless it is contributed to an ABLE account and paid from that account</p>

Questions? Contact Us!

California ABLE Act Board

915 Capitol Mall, Room 590

Sacramento, CA 95814

Phone: (916) 653-1728

Fax: (916) 589-2860

calable@treasurer.ca.gov

<http://www.treasurer.ca.gov/able>



Dale Law Firm

www.dalelawfirm.com

<http://www.gspt.org>

Email amy@dalelawfirm.com to be placed
on our mailing list for future programs

