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Workshop Handouts

Legal and Future Planning

**Theresa Varnet, MSW, JD
Spain, Spain & Varnet PC
Chicago, IL**

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SPAIN, SPAIN & VARNET P.C.

ATTORNEYS AT LAW

SUITE 2220

33 NORTH DEARBORN STREET
CHICAGO, ILLINOIS 60602

TELEPHONE (312) 220-9112

FACSIMILE (312) 220-9261

www.spainpainvarnet.com

RICHARD C. SPAIN^{1,2}
NANCY M. SPAIN¹
THERESA M. VARNET²

SHERI L. WILLARD
JAYME LEVIN-MURIEL
M. CATHERINE TAYLOR
GARTH F. LEWIS
LINDA M. GARRETT
MARC L. GUGLIUZZA

OF COUNSEL

P. MICHELE DELANEY³

SUBURBAN OFFICE
(BY APPOINTMENT ONLY)

ROLLING MEADOWS, ILLINOIS

MASSACHUSETTS OFFICE
2 BRIGHAM STREET
(CORNER OF BRIGHAM & MAIN)
NORTHBOROUGH, MA 01532
TEL (508) 393-4380
FAX (508) 393-4381
tvarnet@spainpainvarnet.com

¹ALSO ADMITTED IN OHIO

²ALSO LICENSED IN MASSACHUSETTS

³ALSO ADMITTED IN PENNSYLVANIA

INTRODUCTION TO SOCIAL SECURITY BENEFITS THAT ARE AVAILABLE TO PERSONS WITH DISABILITIES

If you are disabled and incapable of substantial gainful activity, you may be eligible for either Supplemental Security Income (SSI) or Social Security Disability Income (SSDI). Both of these programs pay money to persons who are disabled and incapable of substantial gainful activity (as of 2006 substantial gainful activity is defined as the ability to earn \$860 or more per month in earned income. For persons who are blind, substantial gainful activity is earning \$1,450 or more per month). If you have a physical or mental impairment which prevents you from doing any work that will enable you to earn at least \$860 per month you may be eligible to apply for SSI. If your disability prevents you from earning more than \$860 per month (\$1,450 for persons who are blind) and you have paid into Social Security for a sufficient number of quarters, you may be eligible to apply for SSDI.

SSDI Requirements:

In addition to being disabled, an individual applying for SSDI must have worked and paid into social security for a minimum number of work quarters, if she/he is drawing on his or her own social security account (the minimum number of quarters is determined by one's age and the number of years she/he worked prior to becoming disabled). There is no deeming of one's assets (i.e. you will not be asked questions about bank accounts, savings bonds, etc.) in order to determine eligibility for SSDI. All that is required is that the individual is disabled and no longer capable of substantial gainful employment, and has paid into social security for the required number of quarters if s/he is drawing on his or her own account. An individual may also be able to collect SSDI under his or her parent's work record, s/he must have been disabled prior to the age of 22, be single and be incapable of substantial gainful employment. In order to collect on a parent's work record, the parent must have died, retired or become disabled. In other words, a dependant adult child can collect SSDI based on his or her parent's work record if the parent is eligible for social security administration benefits.

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SSI Requirements:

SSI requires that in addition to a person being disabled and incapable of gainful employment, s/he must be poor and have very little income and very few resources. The following is a list of resources that an individual is allowed to retain and still be eligible for SSI:

- savings accounts to a maximum of \$2,000 for a single person or \$3,000 for a couple;
- life insurance with a face value of up to \$1,500;
- burial plots for you and your immediate family;
- burial funds up to \$1,500 for you and \$1,500 for your spouse;
- your car, of reasonable value so long as it is used for your or a member of your household's transportation needs
- furniture and household goods of reasonable value for a single adult (in Massachusetts there is no limit on the amount of furniture and household goods);
- your house, regardless of its value, if you live there and do not receive any income from it.

In addition, Social Security does **not** count the following income in deciding SSI eligibility:

- the first \$20 per month of most income from any source;
- the first \$65 per month of most **earned** income, and half of any **earned** income more than \$65 per month;
- food stamps;
- home energy assistance under certain conditions;
- food, clothing, and shelter from certain private non-profit organizations approved by your local Social Security office.

Once you are found eligible for either SSI or SSDI, your eligibility may be reviewed every year or every 3 years if there is an expectation that your disabling condition may improve over time. Even if you have a long term disability, SSI requires your case be reviewed every 5-7 years to determine that you still meet the eligibility criteria.

The amount of SSDI you receive depends upon the number of years you worked and paid into social security, the rate of pay, and your age when you became disabled. The amount of money you receive under SSI is limited to a maximum of \$603 per month as of January 1, 2006 (\$904 per month for a couple), except in those states that supplement the Federal SSI payment. Illinois is not one of the states that supplements the Federal contribution.

There are other ways you can maximize the amount of money you receive under SSI. These include being knowledgeable about deductions allowed for "IMPAIRMENT RELATED EXPENSES" and about SSI's DEEMING requirements if you are living in the home of another and you are receiving free or "in kind" support. The following is a more detailed explanation of each.

Impairment related work expenses are those costs for services and items that a person needs in order to work. The costs for these items and services must be paid by the disabled individual and not be a cost that is reimbursable by Medicare, Medicaid or private insurance. Examples of impairment related expenses are as follows:

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1. Attendant care services
2. Transportation costs
3. Medical devices
4. Prosthesis
5. Work related equipment or services (such as typing aids, page turning devices, telecommunications devices for the deaf, seeing eye dog, medical supplies such as elastic stockings, catheters, incontinence pads)

One-Third Reduction Rule for In-Kind Support:

SSI will decrease the amount you receive by one-third if it is determined that you are receiving "in-kind support" from your parents or a friend or relative. If you are living in the home of another and they are not charging you room and board, then SSI assumes that your parents are making a voluntary contribution toward your support. Regardless of the dollar value of this in kind support, SSI regulations deem this "in kind support" to be equal to one-third of your SSI payment and reduce your payment in kind.

In order to avoid losing one-third of your SSI check you must be able to show that you are either paying rent or contributing your "fair share" toward the costs of maintaining your household. To determine whether or not you are paying your fair share of your household's expenses, SSI officials will require you to itemize your household's expenses and divide those expenses by the number of people living in the home. Household expenses include total monthly expenditures for food, rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewerage and garbage collection. If the amount of expenses divided by the number of people in the home is less than an amount you are capable of paying from your own income, SSI will allow you to keep your whole SSI check. If the amount is greater than the amount you receive in earnings and SSI benefits (even if only over by a few dollars), SSI will deem this excess amount as a voluntary contribution toward your support, and will reduce the SSI check by one-third.

Medicaid Buy-In under The Ticket to Work and Work Incentives Improvement Act of 1999:

Recipients of SSI or SSDI who are interested in working may now be able to do so without the fear of losing comprehensive health care coverage under Medicaid and Medicare. The Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 allows states to establish additional options for Medicaid eligibility. One important element of this "buy-in" option is to give states the option of providing Medicaid coverage to individuals who would be eligible for SSI based on their disability, but who are working and ineligible because of earned income. TWWIIA removes the income ceiling established under the Balanced Budget Act of 1997 and provides states with wide authority to establish both income standards and resource standards for participation. A person who is employed can access continued coverage by Medicaid, even if s/he has a higher income and more assets than Medicaid normally allows, by buying into the program through cost sharing measures based on income level. Your family size determines the income you can have and still be eligible. The cost sharing measures are usually in the form of premiums paid to the state's Medicaid program. Under TWWIIA, an employed individual with a disability may apply for Medicaid even if s/he was previously ineligible because of their income level.

Appeal Process:

If you are denied eligibility for either SSI or SSDI, you can appeal this decision. Instructions on how to file an appeal are given on the back of your notice of denial from Social Security. You will have a much greater chance of winning an appeal if you consult an attorney, advocate or other professional who is familiar with Social Security Regulations and appeal procedures. Some attorneys will accept your case on a contingency fee arrangement. That is, they will get paid only if they win your appeal and will accept 25% of your back payment as full payment for their legal fees. It is important to know that while you have 60 days to appeal, you must appeal within 10 days if you want your benefits to continue throughout the appeals process. This is critical for persons who are dependent on their check for basic care, shelter and support. It may take over a year to receive a hearing and if you do not appeal within 10 days, your benefits will not resume until after a final decision is reached.

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GOVERNMENT BENEFITS FOR PERSONS WHO ARE DISABLED

The purpose of this presentation is to provide you with the information about government benefits that will be helpful to you and your lawyer in planning for your child's future. In addition to trust and estate planning skills, your lawyer needs to have an understanding of the problems of disabling conditions, the interests of the person with a disability, and a familiarity with state and federal entitlement programs upon which the person may depend for lifetime care.

The estate planner needs to develop an estate plan that is flexible and able to respond to future changes in the family member's condition as well as changes in federal and state entitlement and reimbursement regulations.

Nowhere is this analysis regarding future impact more important than in the actual selection of method used in one's estate plan. For example, the selection of an outright gift as opposed to an absolute discretionary spendthrift trust may have a lifetime effect on the person's welfare. This is due to his or her need to remain eligible for government benefits. The primary goal of estate planning is usually to avoid federal and local estate taxes. This goal becomes secondary when planning the estate of a family with a dependent who is disabled who will need state and federal benefits for his/her lifetime care. The need to avoid the loss of state and federal benefits and the need to protect the family's assets from state reimbursement claims for providing services to the person are the primary goals for estate planning for families with members who are disabled.

It is likely that at some point in his or her life, a person with a disability will need government benefits such as SSI, Medicaid, residential, training or support services. Parents need to plan their estate so that their child does not become ineligible for government benefits that have minimum income and resources eligibility requirements. **Parents need to realize that without careful planning, an inheritance may make their child ineligible for disability benefits which can be far more valuable than the inheritance. In some cases, the more a person inherits, the worse**

off he or she may be! Government benefits are important because it is seldom possible for the average family to leave sufficient funds to care for their dependent's lifetime care. The cost of care will vary tremendously depending on the area in which the individual lives and the nature and degree of the individual's disability. It is difficult to predict what the costs of care will be twenty or thirty years from now. To ensure that the beneficiary will not risk his or her eligibility for government benefits should he or she need them, it is important for the estate planner to become familiar with and understand the various means tests and reimbursement requirements for services in their state. These eligibility requirements are discussed in the following sections.

A. Government Benefit Programs

There are basically three categories of governmental benefits which should concern the estate planner.

1. Government Benefits Not Based On Financial Need

The first category includes insurance programs which are not based on financial need. The major insurance programs in this category are Social Security Disability Income (SSDI) and Medicare. A child of a person who is retired, disabled or deceased can collect monthly cash benefits based on the parent's earnings provided that his or her disability began before the age of 22, he or she is unmarried and is dependent for support on the parent who is retired, disabled or deceased. Disability is defined as "the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." Your child need not have worked under Social Security to be eligible. A person who receives Social Security disability benefits for two years is entitled to Medicare hospital and medical coverage. The advantage of Social Security benefits is that the benefits are not reduced or affected by the person's assets.

2. Programs Based on Financial Need

The second category of programs is based upon the individual's financial need. The two most important programs in this category are Supplemental Security Income (SSI) for the aged, the blind, and persons with disabilities and Medical Assistance, which is referred to as Medicaid.

It is important for parents to realize that eligibility for SSI and Medicaid may be critical to an individual who is disabled because SSI and Medicaid eligibility is often necessary to be entitled for other services. For example, group homes and community residences are funded in several states by SSI benefits or by Medicaid benefits. Some parents may feel that they do not have to be concerned with federal medical assistance because their adult child is covered with a private health insurance policy. Often the coverage in programs that insure persons who are disabled is minimal