



CHILDREN WITH DISABILITIES IN FAMILY LAW CASES

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LEAVING A LOVING LEGACY

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LEAVING A LOVING LEGACY

Children with Disabilities in Family Law Cases

- ◇ Child support for child with disabilities
- ◇ Protecting child's government benefits
- ◇ Interaction between child support and benefits
- ◇ Special Needs Trusts
- ◇ How SNT lawyer can help you

Planning for Children with Disabilities

- ◇ Divorce rate higher
- ◇ Litigation or collaborative process
- ◇ Consider needs of child with special needs
- ◇ Very different than needs of other children

Planning for Children with Disabilities

- ◇ Goal: best life possible for child
- ◇ Child provided for financially
- ◇ Maximize resources for child
- ◇ Lifetime of child

◇ CHILD SUPPORT

CHILD SUPPORT

- ◇ Tex. Fam. C. 154.123
- ◇ Amount > guidelines if rebut presumption that guideline amount is in best interest
- ◇ Justify variance if unjust or inappropriate
- ◇ Consider all factors

CHILD SUPPORT

- ◇ Tex. Fam. C. 154.123(b) support factors:
 - ◇ (1) age and needs of child
 - ◇ (2) ability of parents to contribute to support
 - ◇ (3) financial resources available for support
 - ◇ (13) special or extraordinary educational, health care or other expenses

CHILD SUPPORT

- ◇ Factors for support: child's needs
 - ◇ Medical
 - ◇ Therapeutic interventions
 - ◇ Attendant care

CHILD SUPPORT

- ◇ Factors for support: ability of parents to contribute
 - ◇ Caregiver parent
 - ◇ Stay-at-home, part-time or underemployed
 - ◇ Instead of paid help

CHILD SUPPORT

- ◇ Financial impact on caregiving parent:
 - ◇ Unable to work
 - ◇ Time caring, transporting
 - ◇ Cost of caring for child

CHILD SUPPORT

- ◇ Factors for support: financial resources available
- ◇ Government benefits
 - ◇ SSI/Medicaid
 - ◇ Medicaid waiver programs

CHILD SUPPORT

- ◇ Factors for support: special or extraordinary educational, health care or other expenses
- ◇ Entire lifetime of child

CHILD SUPPORT

- ◇ Tex. Fam. C. Sec. 154.302
- ◇ Support beyond age 18 for disabled child
- ◇ Either or both parents support
- ◇ Indefinite period of time

CHILD SUPPORT

- ◇ Tex. Fam. C. Sec. 154.302: if court finds:
- ◇ Child requires substantial care and personal supervision because of a mental or physical disability; and
- ◇ Child will not be capable of self-support; and
- ◇ Disability exists before age 18

CHILD SUPPORT

- ◇ Factors: existing and future needs
- ◇ Care manager
- ◇ Parent provides care or pays for care
- ◇ Public benefits may help w/medical care

CHILD SUPPORT

- ◇ Budget for needs of child
- ◇ Expert—person-centered plan
- ◇ Care manager evaluate, assist with budget
- ◇ Plan services needed and cost

CHILD SUPPORT

- ◇ Original suit—finding of disability if not sure will not be self-supporting
- ◇ Suit for support can be brought at any age. Tex. Fam. C. 154.305(1)
- ◇ Brought by parent, legal guardian or adult child not mentally disabled. Tex. Fam. C. 154.303(b)
- ◇ Caregiver may not be able to afford modification

◇ GOVERNMENT BENEFITS

GOVERNMENT BENEFITS

- ◇ Means-tested public benefits
- ◇ Supplemental Security Income (SSI)
- ◇ \$735 for food and shelter

GOVERNMENT BENEFITS

- ◇ Medicaid
 - ◇ Medical/drug coverage
 - ◇ Therapy
 - ◇ Home services

GOVERNMENT BENEFITS

◇ NOT

- ◇ Social Security Disability (SSDI)
- ◇ Medicare

GOVERNMENT BENEFITS

◇ Eligibility

◇ Disabled: Unable to engage in ANY substantial, gainful activity because of a medically determinable physical or mental impairment

GOVERNMENT BENEFITS

- ◇ Eligibility: Income
 - ◇ Monthly income less than \$2,000
 - ◇ Income = wages, cash, debit cards, food and shelter
 - ◇ Parents' income deemed to child before age 18

GOVERNMENT BENEFITS

- ◇ Eligibility: Income
 - ◇ Parents' providing food and shelter is income
 - ◇ In-kind support and maintenance
 - ◇ Reduces SSI by 1/3

GOVERNMENT BENEFITS

- ◇ Eligibility: Resources
 - ◇ Countable Resources (assets) less than \$2,000
 - ◇ Not countable: home, car, personal items
 - ◇ \$1 of SSI = Medicaid

GOVERNMENT BENEFITS

- ◇ Medicaid waiver programs
 - ◇ Provide services in-home or in community
 - ◇ Instead of nursing home or institution
 - ◇ Waiting lists

GOVERNMENT BENEFITS

- ◇ Medicaid waiver programs
 - ◇ Medically Dependent Children Program (MDCP)
 - ◇ Community Living Assistance and Support Services (CLASS)
 - ◇ Deaf Blind Multiple Disabilities (DBMD)
 - ◇ Home and Community-based Services (HCS)

GOVERNMENT BENEFITS

- ◇ Medicaid waiver programs
 - ◇ Star + Plus Home and Community-Based Services (HCBS)
- ◇ Parents' income not deemed
- ◇ Offset for benefits not appropriate

◇ INTERACTION BETWEEN CHILD SUPPORT AND GOVERNMENT BENEFITS

INTERACTION BETWEEN CHILD SUPPORT AND BENEFITS

- ◇ POMS

- ◇ Program Operations Manual System

- ◇ <https://secure.ssa.gov/poms.nsf/home!readform>

- ◇ https://www.ssa.gov/OP_Home/handbook/handbook.html

- ◇ Texas Medicaid for Elderly and People with Disabilities Handbook (MEPD)

- ◇ <https://hhs.texas.gov/laws-regulations/handbooks/medicaid-elderly-people-disabilities-handbook>



INTERACTION BETWEEN CHILD SUPPORT AND BENEFITS

- ◇ Child support = payment to meet child's need for food/shelter
- ◇ Cash or in-kind
- ◇ Voluntary or court ordered
- ◇ **Poms SI 00830.420**

INTERACTION BETWEEN CHILD SUPPORT AND BENEFITS

- ◇ Child support is income to child regardless of name on check
- ◇ Even if doesn't receive money
- ◇ Reduce or lose SSI
- ◇ Lose SSI = lose Medicaid

INTERACTION BETWEEN CHILD SUPPORT AND BENEFITS

- ◇ “Child” = under 18 or under 22 and regularly attending school designed for paying job
- ◇ POMS SI 00501.010 (B) (3)
- ◇ 2/3 of payment is income if paid by absent parent

INTERACTION BETWEEN CHILD SUPPORT AND BENEFITS

- ◇ Support > 1 child
- ◇ Order states each child's share
- ◇ If not divides equally
- ◇ If no order, must prove intent

INTERACTION BETWEEN CHILD SUPPORT AND BENEFITS

- ◇ In-kind support and maintenance
- ◇ Pay food/shelter directly is income
- ◇ But reduces SSI check by 1/3, not \$ for \$
- ◇ Will have to prove to SSA
- ◇ Example: pay \$600 rent, SSI is \$725 - \$250 = \$485

INTERACTION BETWEEN CHILD SUPPORT AND BENEFITS

- ◇ Arrearage:
- ◇ If parent gives to child it's income
- ◇ If parent doesn't give to child, not income
- ◇ Will have to prove to SSA

◇ SPECIAL NEEDS TRUSTS

SPECIAL NEEDS TRUSTS

- ◇ Special Needs Trust
- ◇ Not countable resource if properly drafted
- ◇ Distributions not income if distributed correctly
- ◇ Retain SSI/Medicaid

SPECIAL NEEDS TRUSTS

- ◇ Types of SNTs: Self-settled special needs trust
- ◇ Money that belongs to beneficiary
- ◇ Medicaid payback

SPECIAL NEEDS TRUSTS

- ◇ Types of SNTs: Third-party special needs trust
- ◇ Someone else's money
- ◇ Gift, will, life insurance benefits
- ◇ No Medicaid payback

SPECIAL NEEDS TRUSTS

- ◇ Self-settled or first party trust for child
- ◇ Child support paid directly to trust
- ◇ Cost of trust recouped by maintaining SSI/Medicaid

SPECIAL NEEDS TRUSTS

- ◇ Irrevocable Court order
- ◇ Payment to trustee of SNT
- ◇ Not income to child
- ◇ Maintain eligibility for SSI/Medicaid

SPECIAL NEEDS TRUSTS

- ◇ Obtain tax ID for trust
- ◇ Report to SSA for trust review
- ◇ Don't reduce child support by SSI
- ◇ State specific amount of support to avoid offset

SPECIAL NEEDS TRUSTS

◇ Example:

◇ Support \$600, reduces SSI to \$135

◇ $\$600 + \$135 = \$735$

◇ $\text{SNT: } \$600 + \$735 = \$1,335$

SPECIAL NEEDS TRUSTS

◇ Example:

◇ Support \$750

◇ Lose SSI/Medicaid

◇ SNT: $\$735 + 750 = \$1,485$ plus
Medicaid

SPECIAL NEEDS TRUSTS

- ◇ Life insurance ordered per decree or agreement
- ◇ Name third-party SNT as beneficiary

SPECIAL NEEDS TRUSTS

- ◇ Wills
- ◇ Third-party SNT for will, life insurance and retirement
- ◇ Beneficiary designations
- ◇ Designate guardian

◇ HOW SNT LAWYER CAN HELP YOU

How SNT Lawyer Can Help You

- ◇ Draft self-settled SNT for support
- ◇ Draft 3d-party SNT for life insurance
- ◇ Draft language for decree
- ◇ Draft new wills/third party SNT

How SNT Lawyer Can Help You

- ◇ Neutral professional in collaborative
- ◇ Consult
- ◇ Spot issues
- ◇ Determine info that needs to be gathered

How SNT Lawyer Can Help You

- ◇ Determining eligibility for gov't benefits
- ◇ Work with financial professional and care manager to determine amount needed for lifetime support

How SNT Lawyer Can Help You

- ◇ Refer you to care managers, service providers, financial advisors
- ◇ Appear in court to educate judge

How SNT Lawyer Can Help You

- ◇ Bill hourly for consulting or expert work
- ◇ Flat fee for SNTs/wills based on complexity

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