

Practical and Pesky Problems . . .

Hyman G. Darling, Esq.
Bacon Wilson, P.C.
33 State Street
Springfield, MA 01103
413-781-0560
hdarling@baconwilson.com

The Overview

- Who do you represent and what is the desired result?
- What is the request or issue presented?
- Can you manage it?
- Do you 'think' the issue will become a problem?

Overview (Cont.)

- Has the issue presented itself before?
- Are you continuing to allow it to persist?
- Can you terminate the request or find an alternative?
- Did you inherit the problem?

But Wait, There's More....

- What if you represent the beneficiary?
- Are you an advocate?
- Doesn't the beneficiary 'have rights'?
- "Hey, it's not YOUR money....It's MINE!"

NOW WHAT? Options!

- Meeting
- Mediation
- Resignation (really?) Who will accept as successor? Who don't you like?
- Read the trust again
- Does the Uniform Trust Code apply?
- Read the trust again!

Options (Cont.)

- If you are Trustee, do you hire Counsel?
- Who is your Attorney....same as drafting attorney?
- Who is beneficiary's attorney?
- Is there counsel needed for the Beneficiary?
- Can you ask the Judge? (petition for instructions?) Be careful what you wish for!

In the Weeds

- Specific issues... READ THE POMS!
- Any colleagues have answers or suggestions?
- Difficult clients...is it worth it?
- Can you obtain releases?
- Court approval? Is this really needed?

Travel Expenses [Part I]

- Question: Can a trustee pay for the beneficiary's and his/her parents' trip to an amusement park?
- Answer: Third party travel to accompany a beneficiary includes transportation, food, and lodging. SI 01120.201.F.3.
- Use a "reasonableness" test to determine the number of people that can be reimbursed or paid. POMS allows the trustee to pay for more than one companion when they see it as necessary. If the beneficiary wants to go an amusement park with their parents, then the trustee may make the decision to pay for both parents to accompany the beneficiary if his/her disability requires extra help. SI 01120.201.F.3.b.

Travel Expenses [Part II]

- Question: What if the beneficiary's siblings want to join them, is the trustee allowed to pay for their expenses as well?
- Answer: The special needs trust should not pay for siblings if their help is not **needed**. SI 01120.201.3.
- Who is doing the asking????

Purchase of Medical Marijuana

- Question: Can a trustee pay for a beneficiary's medical marijuana? Or recreational where legal?
- Answer: Medical marijuana is legal in some states; however, it is illegal under federal law. The author of the article, <https://www.specialneedsalliance.org/the-voice/should-a-special-needs-trust-pay-for-medical-marijuana/>, offers a solution by opening an ABLE account, "An ABLE account is a savings tool that often works in tandem with a SNT by allowing an individual with disabilities personally to own and directly control funds without affecting eligibility for means-tested benefits such as Medicaid or Supplemental Security Income (SSI)." (ONLY IF ABLE IS AVAILABLE)

Marijuana (Cont.)

- If the ABLE option does not exist, then what?
- Move to another state?
- A TruLink card probably won't work in most jurisdictions.
 - Key here is who owns the prepaid card account.
- Will the beneficiary get creative?
- JUST SAY NO!

Issues with Money

- Question: Can the trustee provide the beneficiary with cash?
- Answer: No, because that could impact the beneficiary's eligibility for SSI and/or Medicaid. SI 01120.201.
- But there is a threshold.
- Who reports excess distribution?
- Then what?
- What about gift cards? They are considered to be cash equivalents.

Visiting a Trust Beneficiary

- Question: If the beneficiary resides in an institution, nursing home, other long-term care facility and a designated individual wants to visit the beneficiary in order to ensure the beneficiary's safety/medical well-being, can the trustee pay for this person's expenses?
- Answer: Yes, the trustee may pay for "Travel for a service provider to oversee the trust beneficiary's living arrangements when the beneficiary resides in an institution, nursing home, other long-term care facility (for example, group homes and assisted living facilities), or other supported living arrangements)." SI 01120.201.

Buying a Car

- Question: If the trust buys a car/van for the beneficiary, can anyone else use the car as well?
- Answer: Yes, however, it would be a violation of the sole benefit rule if the trust purchased a car for the beneficiary's child to take him/her to the beneficiary's doctor's appointments twice a month, while the beneficiary's child would be driving the car to school/work every day. SI 01120.201.

Car Issues....

- New or used?
- How about a lease?
- Who owns the car?
- Can you obtain insurance?
- Is caregiver driving the beneficiary?

Alcohol and Gambling Expenses

- Question: Can the trustee pay for the beneficiary's gambling and alcohol expenses?
- Answer: POMS does not specifically address this issue. However, alcohol and gambling expenses are usually not permitted by SNTs. Does the trust include that authority? Is this "comfort" if the beneficiary derives their personal pleasure and fulfillment in these activities?
- Does this supplement or supplant?

Purchase of Cigarettes

- Question: Can the trustee pay for the beneficiary's cigarettes' expenses?
- Answer: POMS does not have a blanket prohibition against using trust funds for cigarettes since these items do not qualify as food or shelter, for which payments are severely limited by federal law. (Source: <https://specialneedsanswers.com/should-a-trustee-make-distributions-for-pornographic-materials--13982>).
- Again, can ABLE assist?

How about a Pool or Hot Tub?

- Does this serve the beneficiary?
- Can this be deemed medically beneficial, and do you have supporting documents?
- Will others benefit?
- Is a lift needed?
- Will the owner have insurance?

What If The Beneficiary is Lucky?

- What if the beneficiary hits the lottery?
- Will they tell you?
- If not, what do you do?
- Who is doing the reporting?
- ABLE? Spend it?

Beneficiary Becomes a Landlord!

- Your beneficiary decides to let a 'friend' live in the house or apartment. OK?
- Your beneficiary receives 'money' from the new occupant.
- Eviction? Turn over the funds? Taxable Income to trust?

Part Time Work by Beneficiary

- This is usually a good option by receipt of some income which is allowable.
- Can they manage and spend their own money?
- If Housing Subsidy is being provided, this is reportable.
- But what if the 401(k) contribution exceeds \$2000?
- Is it able to be withdrawn? May not be vested? Can you opt out?
- Withdraw and spend or add to trust?

Parents are Undocumented....

- Beneficiary has a trust but parents have 'issues'....
- Counsel for them? Trust cannot pay. Counsel for Trustee?
- What if they move back and take their child? Does trust need Counsel?
- Should objections or court action be filed? Guardianship? Custody? Living situations?
- Cultural Differences.....may need translators.

Compensation

- Issue: How can a trustee be compensated?
- Answer: The trust may provide for reasonable compensation for a trustee to manage the trust and reasonable costs associated with investment, legal, or other services rendered on behalf of the individual with regard to the trust. SI 01120.201.F.3.c.
