

Beyond Preservation: Balancing Beneficiary Quality of Life, Fiduciary Duties, and Public Benefits in Special Needs Trust Administration

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I. Beyond Preservation: What is the Trust For?

Special needs trust administration is often taught through warnings. Do not make a distribution that turns an excluded trust into a countable resource. Do not create avoidable SSI income. Do not jeopardize Medicaid eligibility. Do not make an imprudent expenditure. Do not exhaust the trust. Those warnings matter. They reflect real legal rules and legitimate fiduciary concerns. But they can distort the inquiry if they become the inquiry itself.

The trustee must exercise the discretion the trust confers, for the purposes for which it was created, and in light of the beneficiary's circumstances. Public-benefit preservation, prudent stewardship, and quality of life all matter; none should automatically substitute for the others.

The New York Court of Appeals captured that balance in *Matter of Abraham XX.*, describing a supplemental needs trust as serving the dual purpose of securing or maintaining eligibility for publicly funded services while enhancing the beneficiary's quality of life through supplemental care paid from the trust.¹ Although *Abraham XX.* arises under New York law, the formulation identifies the tension that fiduciaries and their counsel confront nationally: preserving access to important public benefits while deciding how trust assets can appropriately be used for the person the trust was created to benefit.²

Thoughtful administration does not mean approving every request. A proposed distribution may fall outside the instrument, threaten an important benefit, disproportionately benefit someone else, create an unsustainable obligation, or consume assets needed later. Caution is appropriate. The problem is when caution substitutes for discretion.

Difficult distribution decisions are easier to analyze if counsel keeps four questions separate:

1. **Authority.** Does the governing instrument, read together with applicable fiduciary law, authorize the proposed distribution?

¹ *Matter of Abraham XX.*, 11 N.Y.3d 429, 434, 900 N.E.2d 136, 138 (2008) (describing a supplemental needs trust as a planning tool used for the dual purpose of "securing or maintaining eligibility for state-funded services" and "enhancing the disabled person's quality of life with supplemental care paid by his or her trust assets")

² See Frederick M. Misilo Jr. & Theresa M. Varnet, *Understanding Special Needs Planning*, ABA GPSolo eReport (Oct. 24, 2023) (describing an SNT as a property-management tool that can maximize eligibility for means-tested benefits, pay for supplemental services and supports that enhance quality of life, and protect trust assets from loss or exploitation). <https://www.americanbar.org/groups/gpsolo/resources/ereport/2023-october/understanding-special-needs-planning/>. See also Special Needs Alliance, *Frequently Asked Questions*, <https://www.specialneedsalliance.org/frequently-asked-questions/>.

2. **Public benefits.** What consequences, if any, will the distribution or proposed method of payment have for SSI, Medicaid, housing assistance, or other benefits the beneficiary actually receives?
3. **Fiduciary judgment.** Is the expenditure reasonable and prudent in light of this beneficiary's circumstances, the purposes of this trust, its available resources, and reasonably foreseeable future needs?
4. **Structure.** Can the beneficiary's objective be accomplished in another way that better preserves benefits, reduces cost, limits unnecessary benefit to third parties, or otherwise improves the result?

These questions overlap, but they are not interchangeable. A distribution may be authorized by the trust and still reduce SSI. A distribution may have no adverse SSI consequence and still be outside the trustee's authority or imprudent under the circumstances. An expenditure may be legally permissible but financially unsustainable. And, in an appropriate case, accepting a known public-benefit consequence may produce a better overall result for the beneficiary than preserving every available benefit dollar.

Public-benefit rules identify consequences. They do not necessarily decide whether the trustee should act. That judgment begins with the governing instrument and applicable fiduciary law and requires attention to the beneficiary, trust purposes and resources, and practical alternatives.

The objective, is neither maximum spending nor maximum preservation, but thoughtful administration. The question throughout is simple: *what is this trust actually for?*

II. Know the Trust You Are Administering

A. "Special Needs Trust" Does Not Describe One Uniform Arrangement

Before analyzing a distribution, identify the trust being administered. "Special needs trust" does not describe a single legal arrangement or uniform set of distribution rules.

A first-party trust established under 42 U.S.C. § 1396p(d)(4)(A) contains the assets of an individual with a disability who is under age 65 when the trust is established. The trust must be established for that individual's benefit by the individual, a parent, grandparent, legal guardian, or court, and must provide for reimbursement to the State or States at the beneficiary's death up to the amount of Medicaid assistance paid on the beneficiary's behalf.³

A pooled trust under § 1396p(d)(4)(C) is established and managed by a nonprofit association. Although funds may be pooled for investment and management, a separate account must be maintained for each beneficiary, and the account must be established solely for the benefit of an

³ 42 U.S.C. § 1396p(d)(4)(A) (excluding from the general Medicaid trust rules a trust containing the assets of an individual under age 65 who is disabled, established for the individual's benefit by the individual, parent, grandparent, legal guardian, or court, and containing the required Medicaid reimbursement provision). The authority for the individual to establish the trust directly was added by the 21st Century Cures Act, Pub. L. No. 114-255, § 5007, 130 Stat. 1033, 1191 (2016). See also CMS, State Medicaid Director Letter No. 17-001 (May 15, 2017).

individual with a disability. At death, amounts remaining in the account that are not retained by the pooled trust are subject to the statutory Medicaid reimbursement requirement.⁴

A third-party SNT is different. It is funded with assets belonging to someone other than the beneficiary or the beneficiary's spouse.⁵ It does not become a § 1396p(d)(4)(A) trust merely because it contains supplemental-needs language or is intended to preserve means-tested benefits. For SSI purposes, a third-party trust is generally evaluated under ordinary trust-resource principles, including whether, under the instrument and applicable state law, the beneficiary can revoke or terminate the trust or direct the use of trust principal for the beneficiary's own support and maintenance.⁶

These classifications affect the governing distribution framework. First-party trusts carry federal statutory requirements, including Medicaid reimbursement at death; pooled trust also operate under their master trust and joinder agreement; and third-party trusts reflect a settlor's choices and may create materially different remainder interests and distribution priorities.

Do not begin with a generic rule about what an "SNT" can pay for. Begin with the particular trust.

B. Start With the Governing Instrument

The instrument should be read before the POMS.

The POMS is indispensable when SSI eligibility or distribution treatment is at issue, but it answers a different question: how SSA will evaluate the trust or distribution. It does not define the trustee's discretion under the governing instrument.

Counsel should therefore begin by asking what the trust actually authorizes. What is its stated purpose? What distribution standard applies? Is the trustee directed to supplement but not supplant public benefits, or merely authorized to consider them? Is discretion broad, or tied to health, education, maintenance, support, comfort, welfare, or another standard? Does the instrument address housing, transportation, caregivers, companions, travel, technology, education, recreation, or professional services? Must the trustee consider other resources? Does another person, committee, trust protector, or co-trustee have a role in distribution decisions?

The instrument may also establish priorities that become obscured when administration is viewed primarily through the lens of public benefits. A trust may expressly prioritize the beneficiary's lifetime needs and quality of life. Another may place greater emphasis on preservation or require consideration of other beneficiaries. Some instruments authorize distributions even when doing so may reduce or eliminate a public benefit if the trustee concludes that the expenditure better serves the beneficiary. Others are considerably more restrictive.

Counsel should not replace the distribution standard selected by the settlor, court, or statute with a generic rule that the trustee must always preserve benefits or principal.

⁴ 42 U.S.C. § 1396p(d)(4)(C); SSA Program Operations Manual System (POMS) SI 01120.203 (setting forth the requirements applicable to pooled trusts and the treatment of amounts remaining at death).

⁵ SSA POMS SI 01120.200.B.16 (defining a third-party trust as a trust established with the assets of someone other than the trust beneficiary or the beneficiary's spouse).

⁶ SSA POMS SI 01120.200.D.1–2 (explaining that resource treatment depends on the beneficiary's legal authority to revoke or terminate the trust or direct use of trust assets for the beneficiary's own support and maintenance, with revocability and control determined by the trust terms and applicable state or tribal law).

C. Governing Law Matters

Trust administration remains largely a matter of state law. The Uniform Trust Code offers a useful national framework for duties such as prudence, loyalty, impartiality, delegation, and discretionary powers, but states have adopted and modified its provisions differently, and some rely substantially on other statutory and common-law principles.⁷

Judicial decisions require the same caution. A decision from one state may illuminate a recurring fiduciary problem, without establishing a national rule. Counsel should confirm that the principle fits the governing instrument and applicable law.

For national practice, keep the sources distinct: identify controlling federal public-benefit law, the governing instrument, and applicable state fiduciary law. None should silently substitute for another.

D. Determine Whether the Court has an Ongoing Role

Some special needs trusts, particularly first-party trusts created or approved in a guardianship, settlement, or other judicial proceeding, remain subject to court supervision. Federal law permits certain first-party special needs trusts to be established through the action of a court, but it does not prescribe a uniform system of continuing judicial oversight.⁸ Depending on applicable state law, court rules, and the order governing the trust, a trustee may be required to obtain court approval for certain distributions or transactions, file periodic accountings, or otherwise remain subject to judicial review.⁹

The extent of court involvement is jurisdiction-specific and may also depend on the proceeding and governing order.¹⁰ The fact that a court established or approved a first-party trust does not, by itself, establish that the court retained continuing supervisory jurisdiction over its administration. Counsel should therefore review the specific establishing order, together with applicable state law and court rules, to determine whether the proceeding has concluded or the court retained an ongoing role and, if so, whether the trustee may act independently, must obtain prior approval for particular transactions, must file periodic accountings, or will otherwise be subject to judicial review.

Court oversight should not be viewed solely as a reason to avoid distributions. Judicial scrutiny may extend to a trustee's failure to investigate the beneficiary's circumstances and meaningfully exercise discretion for the beneficiary's benefit. In *Matter of J.P. Morgan Chase Bank, N.A. (Marie H.)*, the court emphasized the trustees' obligation to remain informed about the beneficiary's condition, needs, and quality of life and to use trust assets for his actual benefit.¹¹ *Marsman v. Nasca*, although not a special needs trust case, similarly illustrates that a trustee with discretionary distribution authority

⁷ Uniform Law Commission, *Uniform Trust Code*, Final Act with Comments (2025); see also Uniform Law Commission, *Trust Code—Enactment Kit* (2025) (providing the uniform text and state enactment materials).

⁸ 42 U.S.C. § 1396p(d)(4)(A); SSA Program Operations Manual System (POMS) SI 01120.203.B.7.

⁹ See, e.g., Cal. Prob. Code § 3604(a)(1); Cal. R. Ct. 7.903(b)–(c); *Matter of Martin*, 38 Misc. 3d 895, 898–902, 957 N.Y.S.2d 608, 611–14 (Sup. Ct. Suffolk Cnty. 2012).

¹⁰ Compare Cal. Prob. Code § 3604(a)(1) and Cal. R. Ct. 7.903 with *Matter of Martin*, 38 Misc. 3d 895, 957 N.Y.S.2d 608. See also Robert Dinerstein, Frank A. Johns & Patricia E. Kefalas Dudek, *Guardianships vs. Special Needs Trusts, and Other Protective Arrangements: Ensuring Judicial Accountability and Beneficiary Autonomy*, 72 Syracuse L. Rev. 423 (2022).

¹¹ *Matter of J.P. Morgan Chase Bank, N.A. (Marie H.)*, 38 Misc. 3d 363, 368–70, 956 N.Y.S.2d 856, 860–62 (Sur. Ct. N.Y. Cnty. 2012).

may be required to make sufficient inquiry into the beneficiary's circumstances to exercise that discretion meaningfully.¹²

E. Identify the Interests the Trust Actually Creates

The identity of the trust also matters because not every person or entity that may receive trust property in the future has the same interest in current administration.

In a third-party trust, the settlor may create remainder interests for siblings, charities, or others and may direct the trustee to consider preservation of principal. Another settlor may make clear that the current beneficiary's lifetime welfare takes priority and that preservation for remainder beneficiaries is secondary. Applicable state law may impose duties concerning multiple beneficiaries, but the nature of those duties must be evaluated in light of the interests the instrument actually creates.

A first-party § 1396p(d)(4)(A) trust presents a different issue. Federal law requires the trust to provide for reimbursement to the State or States at the beneficiary's death, up to the amount of Medicaid assistance paid on the beneficiary's behalf.¹³ That reimbursement requirement is significant, but it should not automatically be treated as a direction to maximize the eventual Medicaid recovery by minimizing otherwise appropriate lifetime distributions. The statute establishes a right of reimbursement from amounts remaining at death; the trustee's authority to make lifetime distributions must still be determined from the trust, applicable federal requirements, and governing fiduciary law.¹⁴

A pooled trust may present yet another structure. Federal law permits the nonprofit association to retain amounts remaining in a beneficiary's account at death; to the extent amounts are not retained, the statutory Medicaid reimbursement provision applies.¹⁵ The master trust and joinder agreement may further define the disposition of the account and the fiduciary's administrative responsibilities.

For counsel, the better question is therefore not simply, "Who receives what is left?" It is: *whose interests does this trust require the fiduciary to consider during the beneficiary's lifetime, what is the nature of those interests, and how do they bear on the particular distribution decision?*

III. Fiduciary Duties in the Special Needs Trust Context

A. Administering According to Terms and Purposes

The Uniform Trust Code Sections 801 and 804 provide a useful frame work. A trustee administers the trust in good faith according to its terms and purposes, and prudence is measured against the

¹² *Marsman v. Nasca*, 30 Mass. App. Ct. 789, 795–97, 573 N.E.2d 1025, 1029–30 (1991).

¹³ 42 U.S.C. § 1396p(d)(4)(A); SSA POMS SI 01120.203.B.1.h (requiring qualifying special needs trusts to provide reimbursement to any State that provided medical assistance, up to the amount of such assistance).

¹⁴ 42 U.S.C. § 1396p(d)(4)(A). The first sentence is primary authority for the reimbursement requirement. The proposition that this requirement does not itself create a lifetime duty to maximize Medicaid recovery is an interpretive proposition drawn from the statutory text, which conditions reimbursement on "amounts remaining in the trust upon the death" of the beneficiary. I would retain the carefully qualified language in the text rather than cite a secondary source purporting to establish a broader national rule.

¹⁵ 42 U.S.C. § 1396p(d)(4)(C)(iv) (providing that, to the extent amounts remaining in a pooled-trust account at death are not retained by the trust, the State receives the remaining amounts up to the total Medicaid assistance paid on the beneficiary's behalf).

trust's purposes, terms, distributional requirements, and circumstances.¹⁶ Applicable state law controls, but the principle is important: fiduciary judgment begins with the trust actually created.

Purpose matters. A trustee is not simply managing an investment account and trying to preserve as much principal as possible. Depending on the instrument, the trust may have been created not only to preserve eligibility for means-tested benefits, but also to provide the beneficiary with greater comfort, independence, safety, community participation, education, recreation, housing, advocacy, or access to goods and services that public programs do not provide.

"Quality of life" is not an unlimited distribution standard. But where an instrument grants broad discretion for welfare or supplemental needs, the trustee should not impose an unwritten requirement that expenditures be medically necessary or essential to basic support.

B. Prudence Is Contextual

Prudence applies to decisions to spend trust assets and decisions not to spend them. Under UTC § 804, prudent administration is evaluated in light of the purposes, terms, distributional requirements, and other circumstances of the trust. The Uniform Prudent Investor Act similarly directs a trustee, in investing and managing trust assets, to consider circumstances including the trust's purposes, distribution requirements, liquidity needs, beneficiary resources, and the need for preservation or appreciation of capital.¹⁷

Prudence is contextual. Counsel may need to consider trust size and liquidity, the beneficiary's age and foreseeable needs, other resources, expected benefits, housing and medical needs, taxes, inflation, recurring commitments, and the practical value of the expenditure.

Recurring expenditures require particular attention. A \$500 monthly expense may appear modest when viewed as a single distribution but represents \$6,000 each year before inflation. Counsel should consider whether the expense is likely to continue, whether the trust can sustain it, and whether approval may create a practical expectation of continued funding. Conversely, a substantial one-time expenditure may improve independence, safety, communication, transportation, or housing in a way that reduces other costs or produces lasting value.

Prudence does not necessarily require the least expensive alternative. A more reliable wheelchair, safer vehicle, better-suited residence, or higher-quality communication device may be reasonable if the additional cost is justified by the beneficiary's circumstances, trust purposes, and resources.

Nor should preservation automatically become the answer whenever future needs are uncertain.

Marsman v. Nasca provides a useful illustration. There, the Massachusetts Appeals Court held that a trustee administering a discretionary "comfortable support and maintenance" standard had a duty to inquire into the beneficiary's financial circumstances. In doing so, the court relied on Massachusetts

¹⁶ Unif. Trust Code §§ 801, 804 (Unif. L. Comm'n 2000, as amended 2025) (requiring administration in good faith in accordance with the trust's terms and purposes and the interests of beneficiaries, and prudent administration in light of the trust's purposes, terms, distributional requirements, and other circumstances). Applicable state enactments control. See Uniform Law Commission, *Uniform Trust Code, Final Act with Comments* (2025).

<https://www.uniformlaws.org/committees/community-home?CommunityKey=193ff839-7955-4846-8f3c-ce74ac23938d>.

¹⁷ Unif. Prudent Investor Act § 2(a)–(c) (Unif. L. Comm'n 1994). **One qualification:** the UPIA directly governs investment and management rather than establishing a freestanding distribution standard. I would therefore use it as supporting context, as the revised text does, rather than suggesting that UPIA § 2 itself governs every distribution decision.

precedent rejecting a persistent policy of conserving trust assets for possible future medical needs when the trust had been established for the beneficiary's comfortable support.¹⁸ *Marsman* is not an SNT case and does not establish a national distribution rule. Its value here is more basic: prudence requires attention to the purposes of the trust and the beneficiary's actual circumstances, not preservation for preservation's sake.

C. Loyalty, Conflicts, and Family Dynamics

UTC § 802 expresses the duty of loyalty as administration of the trust solely in the interests of the beneficiaries.¹⁹ In SNT practice, that principle frequently operates in complicated family settings. A parent may serve as both trustee and caregiver. A sibling may be trustee and remainder beneficiary. A family member may seek compensation, live in a trust-owned residence, use a trust-funded vehicle, or accompany the beneficiary on travel.

A benefit to another person does not automatically make an expenditure impermissible. In the context of first-party and pooled trusts subject to the federal sole-benefit requirement, SSA guidance expressly recognizes that a payment made primarily for the beneficiary may confer a collateral benefit on another person. The POMS also recognizes that family members may be compensated for services in appropriate circumstances and that certain incidental expenses of companions may be paid by the trust.²⁰

But the public-benefit analysis and the fiduciary analysis remain separate. A transaction may satisfy SSA's sole-benefit policy and still present a conflict under the governing instrument or applicable state fiduciary law. Conversely, a transaction that is permissible under state trust law may fail a federal requirement applicable to a particular first-party or pooled trust.

Counsel should ask both questions: does the expenditure satisfy applicable public-benefit requirements, and, if the trustee or a related person benefits, what do the instrument and governing fiduciary law require? Depending on the circumstances, safeguards may include independent valuation, service documentation, a disinterested decision-maker, legally effective consent, or court approval.

Family compensation illustrates the point. The relationship alone does not answer whether payment is proper. Relevant facts include the services provided, their reasonable value, other available funding, conflicts, sustainability, and who should approve the arrangement.

D. Impartiality Does Not Mean Equality

¹⁸ *Marsman v. Nasca*, 30 Mass. App. Ct. 789, 795–97, 573 N.E.2d 1025, 1029–30 (1991) (holding that a trustee administering a discretionary “comfortable support and maintenance” standard was required to inquire into the beneficiary's financial circumstances and citing Massachusetts authority rejecting persistent conservation of trust assets for possible future medical needs where the trust was established for beneficiaries' comfortable support).

¹⁹ Unif. Trust Code § 802(a) (Unif. L. Comm'n 2000, as amended 2025) (“A trustee shall administer the trust solely in the interests of the beneficiaries.”). Applicable state enactments and the governing instrument should be consulted concerning particular conflict rules and permissible transactions.

²⁰ SSA Program Operations Manual System (POMS) SI 01120.201.F.3.a (providing that third-party payments must be for the beneficiary's primary benefit but should not be construed so strictly as to preclude collateral benefit to another person; recognizing family members as permissible service providers and certain incidental companion expenses); id. SI 01120.201.F.3.b (addressing qualifying third-party travel expenses); id. SI 01120.201.F.4 (addressing reasonable trustee compensation and administrative expenses).

UTC § 803 provides that when a trust has two or more beneficiaries, the trustee must act impartially in investing, managing, and distributing trust property, giving due regard to the beneficiaries' respective interests.²¹ The important words are "respective interests." Impartiality does not necessarily require equal distributions, equal economic benefit, or preservation of equal value for current and remainder beneficiaries.

Those interests are defined principally by the governing instrument and applicable law. A settlor may create a trust principally to provide for a beneficiary during life and leave whatever remains to siblings or other remainder beneficiaries. Another instrument may reflect a meaningful preservation objective. The fiduciary analysis should respect those differences.

When remainder beneficiaries object that lifetime distributions diminish their expected inheritance, counsel should identify the nature of their interests under the instrument and governing law than assume their existence creates a principal-preservation. requirement.

E. Discretion Must Actually Be Exercised

Broad discretion does not mean arbitrary discretion. Nor should discretion become a reason for inaction. UTC § 814 and the Restatement recognize limits on the exercise of discretionary powers, although the standard of judicial review depends on the governing instrument and applicable law.²²

A trustee needs enough information to exercise discretion intelligently.

Marsman v. Nasca illustrates the point. The trustee had discretion to distribute principal for the beneficiary's "comfortable support and maintenance," but failed to make adequate inquiry into the beneficiary's financial circumstances. The Massachusetts Appeals Court concluded that the trust imposed a duty of inquiry and that the trustee had not met his responsibilities of either inquiry or distribution.²³ The significance of *Marsman* for SNT practice is not that every trustee must follow a prescribed investigation. It is that discretion based on a beneficiary's circumstances cannot be exercised meaningfully without sufficient information about those circumstances.

The experience of Mark C.H. provides an even more compelling SNT example. During an Article 17-A guardianship proceeding, the New York Surrogate's Court learned that Mark was the beneficiary of a trust worth approximately \$3 million, yet his individual co-trustee had never visited him or contacted his residential program to determine his needs, and no trust funds had been spent for his benefit. The corporate co-trustee likewise acknowledged that it had done nothing to ascertain or meet his needs. The court directed the trustees either to visit Mark and his providers themselves or retain a qualified professional to investigate and make recommendations.²⁴

²¹ Unif. Trust Code § 803 (Unif. L. Comm'n 2000, as amended 2025) (requiring a trustee of a trust having two or more beneficiaries to act impartially, "giving due regard to the beneficiaries' respective interests"). Applicable state enactments control.

²² Unif. Trust Code § 814(a) (Unif. L. Comm'n 2000, as amended 2025); Restatement (Third) of Trusts § 50 (Am. L. Inst. 2003). I would avoid trying to summarize a universal judicial-review standard more specifically here because state law and the language conferring discretion matter materially.

²³ *Marsman*, 30 Mass. App. Ct. at 795–97, 573 N.E.2d at 1029–30. The court emphasized that even discretionary authority must be exercised with reasoned judgment and concluded that the trustee failed to satisfy his responsibilities of inquiry and distribution.

²⁴ *Matter of Mark C.H.*, 28 Misc. 3d 765, 767–68, 906 N.Y.S.2d 419, 421–22 (Sur. Ct. N.Y. Cnty. 2010) (describing the trustees' failure to visit Mark or investigate his needs and the court's direction that they either personally investigate or engage a qualified professional to do so).

The resulting inquiry revealed needs and opportunities that passive administration had missed. A care manager learned that Mark enjoyed restaurant outings, music, and computers; could benefit from enhanced communication technology; had not had a vacation or visitor in years; and was receiving a Medicaid-covered form of medication that caused significant adverse effects when a better-tolerated formulation was available but not covered by Medicaid. Trust funds were subsequently used for goods and services intended to improve his habilitation and quality of life.²⁵

The later trust-accounting decision involving Mark made the fiduciary lesson more explicit. The Surrogate's Court emphasized the trustees' responsibility to remain informed about Mark's condition, needs, and quality of life and to use the trust assets for his actual benefit.²⁶ These are New York trial-court decisions, not a national rule. But they illustrate a problem that can arise anywhere: a trust can be prudently invested, carefully preserved, and administratively compliant while still failing to do much for the person it was created to benefit.

The lesson is not that every SNT requires a care manager, but that individualized discretion requires an individualized understanding of the beneficiary.

F. Delegation and Professional Advice

A trustee need not possess every form of expertise relevant to modern SNT administration. UTC § 807 permits prudent delegation, subject to reasonable care in selecting the agent, defining the delegation, and reviewing performance.²⁷

Useful advisers may include benefits counsel, care managers, accountants, investment advisers, therapists, housing, and technology specialists, and vocational professionals. Their role is to inform not replace, fiduciary judgment.

The amount of professional input should be proportionate to the decision. A \$300 tablet ordinarily should not require a therapist's letter merely because the purchaser is a person with a disability. A \$150,000 home modification may warrant an accessibility assessment, contractor proposals, financial projections, benefits analysis, and perhaps other professional input. The same principle applies to documentation generally.

The objective is enough information to make and explain a reasoned decision, not a medical-necessity file for every aspect of ordinary life.

²⁵ *Id.* at 768–69, 906 N.Y.S.2d at 422–23 (describing the care manager's assessment, including Mark's interest in restaurant outings, music and computers, potential benefit from augmentative communication technology, lack of visitors and vacations, and medication issues, followed by use of trust funds for goods and services intended to improve his habilitation and quality of life).

²⁶ *Matter of J.P. Morgan Chase Bank, N.A. (Marie H.)*, 38 Misc. 3d 363, 368–70, 956 N.Y.S.2d 856, 860–62 (Sur. Ct. N.Y. Cnty. 2012). The subsequent accounting decision involving Mark's trust discussed the trustees' obligation to remain informed concerning Mark's condition, needs, and quality of life and the use of trust assets for his benefit. The proposition is also quoted and applied in *Matter of Andrew C.*, 59 Misc. 3d 968, 977, 73 N.Y.S.3d 840, 848 (Sur. Ct. Erie Cnty. 2017).

²⁷ Unif. Trust Code § 807(a)–(c) (Unif. L. Comm'n 2000, as amended 2025) (addressing prudent delegation, selection of an agent, establishment of scope and terms, and periodic review). Applicable state enactments control.

IV. Public Benefits: Guardrails, Not the Distribution Standard

Public-benefit rules are essential, but they answer only part of the distribution question. Counsel should identify and where possible, quantify the benefit consequence, then return to the governing instrument and fiduciary analysis.

A. Separate Resource Treatment From Distribution Treatment

For SSI purposes, two questions that are easily conflated should remain separate: is the trust principal itself a countable resource, and how will a particular disbursement from the trust be treated? A trust may be excluded as a resource while particular disbursements are treated as income or in-kind support and maintenance depending on what the beneficiary receives and how the payment is made.²⁸

For trusts established with assets of an SSI applicant or recipient, or the individual's spouse, on or after January 1, 2000, § 1613(e) of the Social Security Act generally supplies special trust-counting rules. Certain trusts satisfying the requirements of 42 U.S.C. § 1396p(d)(4)(A) or (C) may qualify for statutory exceptions from those rules.²⁹

Third-party trusts are generally evaluated differently. Under SSA guidance, the resource inquiry ordinarily turns on whether the beneficiary has legal authority under the instrument and applicable state law to revoke or terminate the trust and use the funds for the beneficiary's support and maintenance, or to direct the use of trust principal for that purpose.³⁰

Determine first whether the trust is a resource, then how the proposed disbursement will be treated. Neither inquiry decides whether the trustee should make the distribution.

B. Cash, Vendor Payments, Cards, and Reimbursements

When trust principal is not a resource, cash paid directly from the trust to an SSI recipient is generally unearned income. SSA applies the same treatment to funds placed on the beneficiary's personal debit card.³¹

Third-party payments often produce a different result. Under current SSA guidance, payments for many non-shelter goods and services do not constitute income when the beneficiary receives an item that would be an excluded non-liquid resource if retained. SSA identifies educational expenses, therapy, transportation, professional fees, uncovered medical services, telephone bills, recreation, and entertainment as examples of trust disbursements that may not count as income.³²

²⁸ SSA Program Operations Manual System (POMS) SI 01120.200.D–E (distinguishing whether trust principal constitutes an SSI resource from the income treatment of disbursements where trust principal is not a resource); see also POMS SI 01120.201.I.

²⁹ 42 U.S.C. § 1382b(e); 42 U.S.C. § 1396p(d)(4)(A), (C); SSA POMS SI 01120.201, SI 01120.203. The statute establishes the SSI trust-counting rules applicable to certain trusts containing an individual's assets; the POMS supplies SSA's operating guidance for applying those provisions.

³⁰ SSA POMS SI 01120.200.D.1 (providing that trust principal is a resource if the beneficiary has legal authority to revoke or terminate the trust and use the funds for support and maintenance, or can direct use of principal for support and maintenance; noting the relevance of the trust instrument and applicable state law).

³¹ SSA POMS SI 01120.200.E.1.a; SI 01120.201.I.1.a (treating direct cash disbursements and disbursements to the beneficiary's personal debit card as unearned income when trust principal is not a resource).

³² SSA POMS SI 01120.200.E.1.c; SI 01120.201.I.1.c (identifying educational expenses, therapy, transportation, professional fees, uncovered medical services, telephone bills, recreation, and entertainment as illustrative trust

The method of payment can therefore change the SSI result without changing the underlying objective.

Administrator-managed prepaid cards are a good example. When the trustee owns and controls the card account, SSA looks to the purchases made with the card. Cash withdrawals count as unearned income, while treatment of purchases depends on what the beneficiary receives. If the beneficiary instead owns the prepaid-card account, amounts loaded onto the card are generally treated as unearned income, and an unspent balance may become a resource in the following month.³³

Gift cards and gift certificates require separate analysis. SSA generally treats them as cash equivalents when they can be converted to cash or used in a manner covered by its cash-equivalent rules. Depending on the card's restrictions, receipt may constitute unearned income, and an unspent balance may become a resource in the following month.³⁴

Reimbursement can produce another result. SSA states that reimbursement from a trust to a third party for funds spent on behalf of the beneficiary is not income to the beneficiary. The POMS specifically extends that treatment to reimbursement of a third party's credit card for purchases made for the beneficiary.³⁵ That treatment can make third-party reimbursement useful when direct beneficiary access to cash is unnecessary, but the income rule should not be confused with sound fiduciary administration. The trustee should maintain a sufficiently clear record establishing what was purchased, for whom, and in what amount. A dedicated card used only for beneficiary expenses can simplify that record. If a family member or other third party instead uses a personal card containing mixed charges, the trustee should require itemized statements and contemporaneous supporting documentation sufficient to identify the beneficiary's expenses before reimbursement.

Before advising that an expenditure will affect SSI, identify the payee, ownership of any account or card, the item purchased, and what the beneficiary will receive.

C. Shelter After the 2024 ISM Changes

SSI's in-kind support and maintenance rules changed materially in 2024. Effective September 30, 2024, SSA removed food from the ISM calculation. Under the current regulation, ISM concerns shelter received from another person, and shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection.³⁶

A trust payment for shelter may therefore result in countable ISM. That does not necessarily mean the beneficiary loses SSI. The amount of the reduction depends in part on which of SSA's two ISM

disbursements that may not constitute income and explaining treatment of noncash items that would be excluded resources).

³³ SSA POMS SI 01120.200.E.1.e; SI 01120.201.I.1.e (addressing administrator-managed prepaid cards and distinguishing accounts owned by the trustee from accounts owned by the beneficiary)

³⁴ SSA POMS SI 01120.200.E.1.f; SI 01120.201.I.1.f; see also POMS SI 00830.522 (addressing gift cards and gift certificates as cash equivalents and their income and resource treatment). Because SSA's trust POMS retains some pre-2024 food-related terminology after food was removed from ISM, counsel should consult the current POMS and regulations when applying the rule to a particular card.

³⁵ SSA POMS SI 01120.200.E.1.g; SI 01120.201.I.1.g (providing that reimbursement to a third party for funds expended on behalf of the beneficiary, including reimbursement of a third party's credit card for beneficiary purchases, is not income to the beneficiary).

³⁶ 20 C.F.R. §§ 416.1102, 416.1130; *Omitting Food From In-Kind Support and Maintenance Calculations*, 89 Fed. Reg. 21,199 (Mar. 27, 2024) (effective Sept. 30, 2024). See also SSA, *Helpful SSI Changes Reducing Customer Burden Take Effect* (Sept. 30, 2024). The final rule removed food from the ISM calculation and left shelter as the relevant category.

valuation rules applies. The one-third reduction rule (VTR) applies when the beneficiary lives throughout the month in another person's household, receives shelter from others within that household, and others within the household provide or pay for all of the beneficiary's meals. When the VTR applies, the federal benefit rate is reduced by one-third, and the reduction is not rebuttable by showing that the actual value of the support was lower. In other circumstances involving countable ISM, SSA generally applies the presumed maximum value (PMV) rule. The PMV is one-third of the federal benefit rate plus \$20, but the beneficiary may establish that the actual value of the ISM received was lower.³⁷

The distinction remains important after the 2024 rule change. Although food is no longer valued as ISM, whether others within the household provide or pay for all of the beneficiary's meals remains relevant to determining whether the VTR applies. Counsel analyzing trust-paid shelter should therefore identify the beneficiary's living arrangement before assuming that the PMV rule governs.

Housing transactions illustrate why the distinction matters. SSA guidance provides that if a non-resource trust purchases a home outright and the beneficiary receives shelter as a result, the purchase may result in ISM in the month of purchase. If the trust finances the purchase, mortgage payments may result in recurring shelter ISM. By contrast, trust payments for repairs, maintenance, improvements, or renovations to the home, including accessibility modifications, generally do not themselves constitute ISM under the POMS because they preserve or increase the value of the property rather than provide current shelter.³⁸

The counseling question should therefore be more precise than, "Will this reduce SSI?" Counsel should ask: *By how much? For how long? What housing benefit does the beneficiary receive in return? Are Medicaid eligibility or state supplementation affected? Is there another payment structure that produces a better result?*

An SSI reduction is a consequence to evaluate, not necessarily a reason to reject the expenditure. Depending on the beneficiary and alternatives, accepting a predictable reduction may be reasonable when housing security, accessibility, privacy, or independence materially improves.

D. Sole Benefit, Primary Benefit, and Incidental Benefit

"Sole benefit" should be used carefully because it does not operate as a universal distribution standard for every special needs trust. Federal Medicaid law expressly imposes a sole-benefit requirement on pooled-trust accounts qualifying under § 1396p(d)(4)(C), and sole-benefit concepts also appear in statutory transfer exceptions and SSA's administration of trusts established with an individual's own assets.³⁹

Third-party trusts are different. A third-party SNT funded with assets belonging to someone other than the beneficiary or the beneficiary's spouse is not subject to the federal sole-benefit requirements applicable to trusts funded with the beneficiary's own assets merely because it is an SNT. Whether

³⁷ 20 C.F.R. § 416.1140; SSA POMS SI 00835.300 et seq. (addressing valuation of ISM under the presumed maximum value rule and rebuttal based on actual value); 20 C.F.R. §§ 416.1131–416.1133, 416.1140–416.1141; SSA POMS SI 00835.200, SI 00835.300.

³⁸ SSA POMS SI 01120.200.F (addressing trust purchase of a home, mortgage payments, household operating expenses, and home repairs, maintenance, improvements, and renovations). The POMS states that payments for improvements such as accessibility renovations do not provide ISM because they increase or preserve the value of the resource.

³⁹ 42 U.S.C. §§ 1396p(c)(2)(B)(iii)–(iv), 1396p(d)(4)(C)(iii); SSA POMS SI 01120.201.F. The applicability and source of a sole-benefit requirement should be identified for the particular trust rather than assumed from the "SNT" label.

and to what extent a third-party trust may confer a benefit on another person instead depends on the governing instrument and applicable state fiduciary law. Counsel should therefore avoid importing the sole-benefit and primary-benefit standards of POMS SI 01120.201.F into the administration of a third-party trust as though they were a universal distribution rule.⁴⁰

Even where the requirement applies, “sole benefit” does not mean that no other person may receive any incidental advantage from an expenditure. SSA instructs that when a trust purchases goods or services from a third party, the expenditure must be for the beneficiary’s primary benefit, but the policy should not be applied so strictly that any collateral benefit to another person invalidates the expenditure. SSA gives examples that include other family members living in a home purchased for the beneficiary and others watching a television purchased for the beneficiary.⁴¹

The limitation is equally important. SSA’s guidance looks to the beneficiary’s *primary* benefit. Its vehicle example distinguishes a vehicle purchased for the beneficiary and used to transport the beneficiary from one purchased primarily for another person’s use. The fact that the beneficiary receives some benefit does not necessarily establish primary benefit.⁴²

The facts therefore matter: who owns and uses the property, how often, who receives the economic benefit, whether cost is proportionate to the beneficiary’s benefit, and whether the transaction would occur on similar terms without the beneficiary.

Family compensation presents the same need for careful analysis. SSA guidance recognizes that a family member may provide compensable services to the beneficiary and that a family relationship does not by itself prevent payment.⁴³ But satisfying the applicable sole-benefit policy does not resolve the separate fiduciary questions discussed in Section III. Counsel should still consider the services provided, reasonable compensation, documentation, conflicts of interest, other available funding, and the governing instrument and state law.

E. Companion and Travel Expenses

SSA guidance permits certain third-party travel expenses when assistance is necessary because of the beneficiary’s disability, medical condition, or age. The POMS generally accepts the trustee’s statement of need absent contrary evidence, does not require a physician’s statement merely to establish medical necessity, and considers whether the number of companions is reasonable.⁴⁴

That does not mean the trust can automatically pay for an entire family vacation whenever the beneficiary travels with family. Counsel should identify who is providing necessary assistance, why that assistance is needed, which expenses are attributable to the companion role, and whether the number of companions is reasonable under the circumstances.

⁴⁰ SSA POMS SI 01120.200.B.16 and contrasting SI 01120.201.F.

⁴¹ SSA POMS SI 01120.201.F.3.a (providing that goods or services purchased from third parties must be for the beneficiary’s primary benefit but that the rule should not be applied so strictly as to prevent collateral benefit to others).

⁴² *Id.* (using vehicle ownership and use to illustrate the distinction between a purchase primarily benefiting the trust beneficiary and one primarily benefiting another person).

⁴³ *Id.* (recognizing that family members may provide compensable services to a trust beneficiary and addressing payments to third-party service providers).

⁴⁴ SSA POMS SI 01120.201.F.3.b (addressing third-party travel expenses where assistance is necessary for a beneficiary to travel and directing consideration of whether the number of accompanying persons is reasonable).

The analysis should also avoid medicalizing ordinary travel unnecessarily. The beneficiary's own vacation does not need to become "therapy" to be a legitimate trust expenditure if the governing instrument otherwise permits it. The separate question is whether paying another person's travel costs satisfies the requirements applicable to that trust.

F. Do Not Assume the SSI Answer Resolves Medicaid

Medicaid requires separate analysis. Federal law establishes important trust and transfer rules, but states administer Medicaid within that framework, so the beneficiary's eligibility category and state rules affect trust review, reporting, post-eligibility income treatment, waiver services, transfers, and related issues.⁴⁵

For national practice, the important discipline is to avoid saying simply that "Medicaid allows" or "Medicaid prohibits" an expenditure without identifying the rule, program, and jurisdiction involved. An SSI analysis may be highly relevant to a Medicaid recipient, particularly where SSI eligibility establishes a pathway to Medicaid, but it should not automatically be treated as the complete Medicaid analysis.

Counsel should know which benefits the beneficiary actually receives before advising the trustee how a proposed distribution will affect them.

V. A Practical Framework for Distribution Decisions

The legal rules above are necessary, but they do not answer the phone call that begins, "The beneficiary wants the trust to pay for this. Can we?"

The analysis should begin with the beneficiary, the trust, and the transaction. The framework below organizes that analysis without turning every request into a legal memorandum. The inquiry should be proportionate to cost, complexity, benefit consequences, conflicts, and permanence.

Step One: Understand the Beneficiary and the Objective

Start with the person rather than the item.

What is the beneficiary trying to accomplish? Greater independence? Safety? Privacy? Social connection? Employment? Comfort? Communication? Recreation? A more stable home? Relief for an unsustainable caregiving arrangement? The same expenditure can serve very different purposes for different beneficiaries.

The beneficiary's preferences should be sought and considered when reasonably possible. A trustee may decline the request, but individualized discretion requires sufficient information about what the beneficiary wants and why it matters.⁴⁶

⁴⁵ 42 U.S.C. § 1396p(d); Centers for Medicare & Medicaid Services, *State Medicaid Manual*, ch. 3, §§ 3257–3259 (addressing Medicaid trust provisions).

⁴⁶ See *Marsman v. Nasca*, 30 Mass. App. Ct. 789, 795–97, 573 N.E.2d 1025, 1029–30 (1991) (holding, under Massachusetts law and the particular discretionary support standard at issue, that the trustee had a duty to inquire into the beneficiary's financial circumstances sufficiently to recognize his needs). The case is illustrative rather than a national SNT rule.

Counsel should also identify whose request is actually being evaluated. A parent may ask the trust to purchase a larger home “for the beneficiary,” while the beneficiary’s principal concern is living closer to friends or having greater privacy. A residential provider may recommend technology that makes its staff’s work easier but does little for the beneficiary. A family member may sincerely believe that a particular service is necessary when the beneficiary strongly prefers another arrangement.

Where direct communication is difficult, information may come from family, residential staff, care managers, advocates, clinicians, or others who know the beneficiary. Counsel should remain alert to conflicts or competing perspectives when the person describing the need may also benefit from the expenditure.

Before moving forward, counsel should be able to state the objective in a sentence. If the objective is unclear, the analysis is probably not ready to proceed.

Step Two: Define the Transaction Precisely

A vague request often hides the legal issue.

“Pay for a house” should become: Who will own the it? Who will live there? What will it cost to purchase and maintain? Who will contribute? What happens if the beneficiaries moves or dies?

“Pay Mom as caregiver” should become: What services will she provide? How many hours? At what rate? What services are already funded elsewhere? Will duties be documented? Who will approve payment if the trustee has a conflict?

The same approach applies to other requests. Identify what the trust is actually purchasing, who will own or control it, who will use it, who else will benefit, whether the obligation is one-time or continuing, and what related expenses may follow.

Ownership can matter substantially. A trust-owned vehicle, beneficiary-owned vehicle, and vehicle owned by a parent may present different trust-law, public-benefit, liability, tax, and practical considerations. The same is true of a residence, prepaid card, device, insurance policy, or other significant asset.

Counsel should analyze the actual legal and economic transaction, not the shorthand description.

Step Three: Read the Trust and Identify the Source of Authority

Next, return to the governing instrument.

Locate the operative distribution provision, but do not stop there. Review relevant definitions, statements of purpose, public-benefit provisions, administrative powers, conflict provisions, court orders, master trust agreements, joinder agreements, and restrictions on amendment or termination. Determine whether the trustee may act alone or whether a co-trustee, trust protector, distribution committee, court, or other person has a role.

Then identify the governing law. As discussed in Sections II and III, broad “discretion” does not answer the question by itself.

At this stage, counsel should be able to identify the source of authority for the proposed expenditure and any meaningful limitations. If authority remains uncertain, that uncertainty may warrant additional research, advice, consent, or, judicial guidance.

Step Four: Map the Public Benefits

Identify the benefits the beneficiary actually receives.

A short benefits inventory may include SSI, SSDI, Medicaid and the particular basis for eligibility, Medicaid waiver services, Medicare, subsidized housing, SNAP, state supplementation, Medicare Savings Program assistance, or other state and local programs.

Then ask which the proposed transaction could actually affect.

This avoids two common errors: protecting a benefit the beneficiary does not receive and focusing on SSI while overlooking a Medicaid, housing, or other program rule that matters more.

Quantify the consequence where reasonably possible. A known \$100 or \$200 monthly SSI reduction differs materially from loss of eligibility for essential medical or residential services.

The level of benefits analysis should fir the decision. A substantial or unusual transaction may warrant analysis; an ordinary expenditure with a well-established result may not.

Step Five: Analyze Cost, Sustainability, Alternatives, and Timing

Place the request in the context of the trust as a whole: its significance relative to assets, whether it is one-time or recurring, follow-on costs, foreseeable needs, liquidity, and any longer-term financial value.

Recurring expenses should be annualized. A \$750 monthly expenditure is also a \$9,000 annual commitment. If it is likely to continue for ten years, the trustee should understand the scale of the commitment rather than evaluate the first month's invoice in isolation.

Alternatives matter, but only if meaningful. Ask whether a less expensive option, other funding source, or different structure can adequately accomplish the beneficiary's objective.

If another source will provide substantially the same benefit within a reasonable time, using it may preserve trust assets. But theoretical funding, an indefinite waiting list, or an inadequate alternative should not automatically delay an otherwise appropriate expenditure, absent a governing payer-of-last-resort requirement.

Timing also matters. A purchase that can reasonably wait six months while another funding source is pursued is different from a vehicle needed for employment next week, an accessibility modification necessary for a pending move, or technology that would immediately permit the beneficiary to communicate independently.

At the end of this step, the trustee may conclude yes, no, or **not yet**. "Not yet" may be appropriate when the decision requires additional information, pricing, professional input, benefits analysis, or financial projections.

Step Six: Choose the Payment Method

Approval of the objective does not end the analysis. Determine how the expenditure should be made.

Options may include direct payment to a vendor, reimbursement to a third party, use of a trustee-controlled prepaid card, transfer to an ABLE account, or, where legally appropriate, a bona fide loan.

As discussed in Section IV, different payment methods can produce different SSI and administrative consequences.⁴⁷

Where reimbursement is used, the trustee should consider whether the arrangement provides a sufficiently clear record of the beneficiary's purchases. A dedicated card or account may simplify administration, particularly when reimbursements will be frequent.

The method should also fit the practical circumstances. A payment structure that technically preserves benefits but is cumbersome, expensive, or unworkable may not be the best solution.

Payment mechanics are part of the planning, not an administrative afterthought.

Step Seven: Document in Proportion to the Decision

Create a record proportionate to the decision.

The file should allow a later reviewer to understand what was requested, why it mattered to the beneficiary, what trust authority was considered, the public-benefit consequences cost, who else would benefit, what alternatives were considered, and why the trustee approved, denied, deferred, or restructured the request.

A routine \$300 purchase does not require the same record as a \$100,000 vehicle, a residence, a long-term caregiver arrangement, or a transaction benefiting the trustee or a family member.

Documentation also improves decision-making by exposing missing information, conflicts, unsupported benefit assumptions, or overlooked recurring costs.

The objective is a reasoned decision and a record showing how the trustee reached it.

VI. Applying the Framework to Real Life

The framework is most useful when applied to recurring categories of SNT administration. The categories below are not lists of automatically permissible expenses. They identify the facts that tend to matter.

A. Housing and Transportation

Housing and transportation often determine whether independence, employment, medical care, relationships, and community participation are realistic. They also can consume substantial trust assets and create continuing expenses or collateral benefits to others.

For housing, counsel should focus on ownership, occupants, purchase or rental cost, financing, accessibility, carrying expenses, contributions by others, expected duration, and an exit plan. SSA's current rules may treat trust-paid shelter as ISM, while repairs, maintenance, improvements, and accessibility renovations generally receive different treatment. The relevant question is not merely

⁴⁷ See, e.g., SSA Program Operations Manual System (POMS) SI 01120.201.I.1 (addressing SSI treatment of disbursements from a trust whose principal is not a resource, including cash payments and bona fide loans); id. SI 01120.201.F.3 (addressing payments to third parties under the sole-benefit policy).

whether SSI will be reduced, but by how much, for how long, and what the beneficiary receives in exchange.⁴⁸

For transportation, consider ownership, expected use, driver, modifications, insurance, maintenance, useful life, replacement, and realistic alternatives. Family use should be evaluated rather than automatically rejected. Where the sole-benefit policy applies, SSA distinguishes an asset purchased primarily for the beneficiary that incidentally benefits others from one principally used by someone else.⁴⁹

B. Technology, Recreation, Travel, and Ordinary Life

Evaluate technology by what it enables the beneficiary to do. A smartphone may support communication, navigation, employment, transportation, banking, safety, social connection, and entertainment; smart-home devices may increase independence; and digital tools may provide recreation or community. Ordinary technology need not be medical equipment to have legitimate value.

The same principle applies to recreation. Vacations, hobbies, concerts, sports, clubs, restaurants, gaming, and other ordinary enjoyment may be legitimate discretionary expenditures when authorized and reasonable. A beneficiary's life need not be organized entirely around treatment.

Travel requires additional analysis when the trust will pay another person's expenses. Where applicable, SSA guidance permits certain companion expenses when assistance is necessary and the number of companions is reasonable. The beneficiary's own vacation need not be characterized as therapy; the separate question is whether paying someone else's expenses satisfies the rules applicable to that trust.⁵⁰

Recurring technology, entertainment, and subscription expenses should be reviewed in the aggregate. Individually modest charges can become a substantial annual commitment.

C. Caregiving and Family Support

Caregiving arrangements combine beneficiary need, family economics, conflicts, public funding, tax and employment issues, and sustainability. Begin with the service: what is provided, for how many hours, at what rate, what other program pays or could pay, and how performance and payment will be documented?

SSA's sole-benefit guidance does not categorically prohibit family compensation. But that resolves only part of the analysis. Counsel should separately consider authority, conflicts, reasonable

⁴⁸ See 20 C.F.R. §§ 416.1130(b), 416.1140; SSA POMS SI 01120.200E.1.b, F.3.b (trust-paid shelter and treatment of home-related expenditures); Omitting Food From In-Kind Support and Maintenance Calculations, 89 Fed. Reg. 21,199 (Mar. 27, 2024) (effective Sept. 30, 2024).

⁴⁹ See SSA POMS SI 01120.201F.3.a (explaining, in the sole-benefit context, that goods or services purchased primarily for the beneficiary may confer collateral benefit on others and providing vehicle-use examples).

⁵⁰ See SSA POMS SI 01120.201F.3.b (addressing payment of certain third-party travel expenses when assistance is necessary because of the beneficiary's medical condition, disability, or age, and directing consideration of whether the number of accompanying persons is reasonable).

compensation, duplication of publicly funded services, sustainability, and who should approve the arrangement if the caregiver is also the trustee.⁵¹

Paying a family caregiver or providing respite may preserve a stable living arrangement that would be difficult or more expensive to replace. In another case, the proposal may shift ordinary family expenses to the trust. The facts control.

D. Education, Employment, and Personal Development

Tuition, tutoring, certifications, vocational programs, job coaching, adaptive equipment, transportation, therapies, dental care, hearing devices, counseling, exercise programs, and other services may improve independence, health, earning capacity, social connection, or personal development. Public coverage is relevant but not dispositive. A theoretical benefit that is unavailable in practice or subject to harmful delay may not be a meaningful alternative.

Consider the beneficiary's preference, expected benefit, cost, coverage, alternatives, and provider qualifications where relevant. A trial period, staged funding, or reassessment may manage uncertainty better than an immediate all-or-nothing decision.

E. Health and Wellness Expenses

Medical, dental, therapeutic, and wellness expenses may include services or equipment that are unavailable, inadequately covered, or subject to significant delay through public programs. SSA recognizes that trust payments for medical services not covered by Medicaid may not constitute income for SSI purposes.⁵²

Consider the beneficiary's preferences and expected benefit, coverage, cost, alternatives, and material delay. Theoretical public coverage should not control if the service is unavailable in practice or delay would materially disadvantage the beneficiary; conversely, lack of coverage does not itself justify trust payment.

Significant, elective, or experimental interventions may warrant additional professional review proportionate to the cost, risk, and circumstances of the decision..

G. Service Animals, Emotional-Support Animals, and Pets

An animal's legal classification may matter for housing, access, and other purposes, but it does not itself determine whether a trust may pay expenses associated with the animal. The ADA generally defines a service animal as a dog individually trained to perform work or tasks related to an individual's disability and excludes emotional support, comfort, and companionship alone from that definition.⁵³ Other laws may apply different standards to assistance animals.

For trust-distribution purposes, the analysis should return to the governing instrument, the beneficiary's circumstances, and the reasonableness of the expenditure. An animal may provide

⁵¹ See SSA POMS SI 01120.201F.3.a (recognizing that family members may be compensated for services provided to the beneficiary and discussing reasonableness of compensation).

⁵² SSA POMS SI 01120.200.E.1.c (identifying medical services not covered by Medicaid among illustrative third-party trust disbursements that may not constitute SSI income).

⁵³ 28 C.F.R. §§ 35.104, 36.104 (defining "service animal" and providing that emotional support, well-being, comfort, and companionship alone do not constitute work or tasks under the ADA definition).

disability-related assistance, companionship, routine, enjoyment, or opportunities for social interaction. Research concerning assistance animals has identified potential benefits in areas including psychological well-being, social participation, independence, and quality of life, although the evidence is mixed.⁵⁴

Relevant considerations include acquisition or adoption costs, training, ongoing care, housing restrictions, the beneficiary's participation in care, and responsibility when the beneficiary cannot provide it. An animal need not qualify as a service animal to have meaningful value; the fiduciary question is whether the expenditure is authorized and reasonable in light of the beneficiary, trust purposes, and resources.

VII. The Hard Cases: When Reasonable Fiduciaries May Disagree

The hardest SNT decisions are rarely resolved by locating an expense on a list. The following hypotheticals illustrate why the same framework can lead reasonable fiduciaries to different conclusions.

A. The \$20,000 Vacation From a \$350,000 Trust

A 38-year-old beneficiary receives SSI and Medicaid and has a third-party SNT worth approximately \$350,000. The trust broadly authorizes distributions for comfort and welfare. The beneficiary wants a \$20,000 trip and cannot reasonably travel without a companion.

The question is not simply whether vacations are allowed. Consider authority, SSI treatment and payment method, companion need and cost, the trip's significance, foreseeable needs, other resources, and whether spending about 5.7% of principal is sustainable.⁵⁵

Reasonable trustees may decline, approve, or approve a less expensive version. Counsel's role is to ensure that the actual request is decided under the actual trust with adequate information, not a categorical rule about vacations.

B. Paying the Parent Who Has Always Provided Care

A parent has provided extensive uncompensated support for fifteen years and now requests \$40,000 per year because caregiving prevents full-time employment. The beneficiary also receives Medicaid-funded personal care.

Neither "parents should not be paid" nor "the parent has sacrificed enough and deserves compensation" resolves the issue. The trustee should identify the services, hours, reasonable rate, possible duplication of public services, employment and tax consequences, sustainability, and any conflict. If the parent is also trustee, the decision may require a disinterested fiduciary or other safeguard under the instrument and governing law.⁵⁶

⁵⁴ Kerri E. Rodriguez et al., *The Effects of Assistance Dogs on Psychosocial Health and Wellbeing: A Systematic Literature Review*, 15 PLOS ONE e0243302 (2020) (reviewing evidence concerning psychological well-being, social functioning, independence, and quality of life and finding mixed results).

⁵⁵ See SSA POMS SI 01120.200E.1.c (identifying transportation, recreation, and entertainment among examples of third-party trust disbursements that may not constitute SSI income); id. SI 01120.201F.3.b (third-party travel expenses in the sole-benefit context).

⁵⁶ See SSA POMS SI 01120.201F.3.a (family members as compensated service providers and reasonableness of compensation).

A reasonable trustee might approve, modify, document, or decline the arrangement. The family relationship alone does not answer the question.

C. The Shared Home

A \$1.5 million trust is asked to purchase a \$650,000 home in which the beneficiary and two family members will live. The family members will provide substantial informal support but cannot contribute significantly to the purchase price.

The home may provide stable housing and support that would be difficult or expensive to replace, while also conferring valuable housing on others. Counsel should examine the beneficiary's preference, price, title, occupancy rights, carrying costs, support provided by the family, public-benefit consequences, and what happens if the beneficiary moves, dies, or the family relationship changes.

Collateral benefit does not automatically defeat a transaction where applicable law permits it. The question is whether the arrangement as a whole is authorized, primarily serves the beneficiary where that standard applies, and is reasonable for the trust.⁵⁷

D. The Beneficiary Who Willingly Accepts an SSI Reduction

A beneficiary wants the trust to pay rent for a safer apartment closer to work, family, and community activities. The payment will create shelter ISM and reduce SSI, while Medicaid is expected to continue under the applicable eligibility pathway.⁵⁸

Counsel should verify the actual SSI reduction and any Medicaid or other consequences, then evaluate what the beneficiary receives in exchange. Does the move improve safety, employment stability, transportation, privacy, or social connection? Can the trust sustain the rent?

The trustee may still find the recurring cost too high. But ending the analysis solely because SSI will be reduced turns the benefit consequence into the distribution standard. Public-benefit rules supply the consequence; the trust and fiduciary judgment determine what to do with it.

These examples also expose a recurring problem of personal taste. A trustee may dislike premium concert tickets, gaming, cosmetic dental work, pets, or expensive hobbies. The trustee is entitled to exercise judgment, but personal preference is not itself the distribution standard. A denial should be explainable in terms of authority, beneficiary circumstances, cost, competing needs, risks, sustainability, or another fiduciary consideration.

VIII. Defending the Decision

Reasonable fiduciaries may disagree about difficult requests. A contemporaneous record helps show what the trustee knew, considered, and decided, and may expose missing information, conflicts, unsupported benefit assumptions, or recurring costs.⁵⁹

⁵⁷ See SSA POMS SI 01120.201F.3.a (stating, where the sole-benefit policy applies, that an expenditure primarily for the beneficiary may confer collateral benefit on another person without necessarily violating the sole-benefit requirement).

⁵⁸ See 20 C.F.R. §§ 416.1130(b), 416.1140; SSA POMS SI 00835.300 (presumed maximum value rule); SSA, Living Arrangements, Supplemental Security Income (SSI) (2026) (explaining current ISM treatment and the 2026 maximum reduction attributable to in-kind shelter under the applicable rule).

A. Documentation Should Be Proportionate

Not every distribution requires a memorandum. Routine purchases may need only ordinary trust records. A major housing transaction, substantial vehicle purchase, family-compensation arrangement, conflicted transaction, unusual transfer, or significant recurring commitment ordinarily warrants more.

For a substantial decision, a short memorandum can identify the request and beneficiary objective; relevant trust authority; material benefit consequences; cost and effect on trust resources; ownership and payment structure; third-party benefits or conflicts; meaningful alternatives; professional input; sustainability; and the trustee's decision and reasons. The objective is not a brief. It is a record that allows a later reviewer to understand the exercise of discretion.

Beneficiary input should be included where material and reasonably available. The trustee need not follow the beneficiary's preference, but a decision about the beneficiary's life should reflect an effort to understand what the beneficiary wants and why.⁶⁰

B. Defending the Yes, No, and Not Yet

A significant approval is easier to defend when the file shows that the trustee identified authority, understood material benefit consequences, evaluated cost and sustainability, considered third-party effects and realistic alternatives, and connected the expenditure to the beneficiary and trust purpose. If the trustee knowingly accepts an SSI reduction or chooses a more expensive alternative, the record should say why.

A denial deserves the same discipline. "It might affect benefits," "the trust needs to last," or "we do not pay for vacations" is not enough without the underlying analysis. A reasoned denial may rest on lack of authority, material benefit consequences, disproportionate cost, duplication, excessive third-party benefit, unresolved conflict, inadequate information, or a realistic alternative.

Sometimes the answer is "not yet" or "not this way." Additional information, an appraisal, benefits analysis, trial period, staged commitment, different payment method, cost sharing, ABLE account, or another funding source may permit the trustee to accomplish the objective more effectively. A deferral should identify what would allow the request to be reconsidered.⁶¹

C. Revisit Material Continuing Arrangements

Some decisions depend on facts that change. Caregiver hours and public funding change. Technology becomes obsolete. A residence may stop meeting the beneficiary's needs. Recurring expenses may become significant after a decline in trust assets.

⁵⁹ See Unif. Tr. Code § 810(a) (Unif. L. Comm'n 2023) (requiring a trustee to keep adequate records of trust administration). Applicable state law and the governing instrument control.

⁶⁰ See *Matter of Mark C.H.*, 28 Misc. 3d 765, 767–69, 906 N.Y.S.2d 419, 421–23 (Sur. Ct. N.Y. Cnty. 2010) (illustrating the problems created when trustees failed to ascertain the beneficiary's circumstances and needs). The decision is illustrative New York trial-court authority, not a national rule.

⁶¹ See SSA POMS SI 01120.200E.1.h (excluding from SSI income funds transferred from a non-resource trust into an ABLE account established by the beneficiary); 26 U.S.C. § 529A.

Material continuing arrangements should therefore be reviewed when circumstances warrant rather than treated as permanent. The point is not constant reapproval of ordinary life. It is to recognize when the facts supporting an earlier decision have materially changed.

A good record does not make a difficult decision indisputable. It makes the reasoning understandable.

IX. Drafting Today for Better Administration Tomorrow

Many administration problems begin with a document that says little about the life the trust is intended to support. Drafting cannot predict future technology, benefit rules, family arrangements, or care models, but can give the trustee clearer guidance.

A. State Purpose and Priorities

A purpose provision can identify goals such as independence, safety, comfort, privacy, community participation, relationships, recreation, education, employment, and appropriate services, but should be coordinated with the operative distribution standard to avoid inadvertently creating a mandatory support obligation or distribution right.⁶²

The instrument should also clarify the priority of the current beneficiary and any meaningful preservation objective. If the beneficiary's lifetime welfare is intended to take priority over preserving an inheritance for remainder beneficiaries, consider saying so. If preservation is a co-equal objective, say that instead.

B. Address Benefits and Other Resources With Flexibility

A direction to consider public benefits is different from an absolute direction never to reduce them. Benefit programs and beneficiary circumstances change. If the settlor intends preservation to be important but not absolute, the instrument can authorize the trustee to weigh the value of the benefit against what a proposed expenditure would accomplish.⁶³

The same precision should apply to other resources. "Consider other resources," "use reasonable efforts to obtain other resources," and "exhaust other resources first" are materially different instructions. The drafting should reflect the settlor's actual intent rather than leave the future trustee to infer a payer-of-last-resort rule.

C. Anticipate Family Involvement, Incidental Benefit, and Conflicts

Housing, vehicles, caregiving, companionship, and travel often create some benefit to family members. Where consistent with applicable law and the settlor's objectives, the instrument can authorize reasonable incidental benefits, family compensation under appropriate standards, and

⁶² See Unif. Tr. Code §§ 801, 803, 814(a) (Unif. L. Comm'n 2023) (administration according to trust terms and purposes, impartiality among beneficiaries according to their respective interests, and exercise of discretionary powers in good faith and consistently with the trust's terms and purposes and beneficiaries' interests). State enactments vary.

⁶³ The importance of drafting flexibility is reinforced by changing benefit rules. For example, SSA removed food from SSI in-kind support and maintenance calculations effective September 30, 2024. See *Omitting Food From In-Kind Support and Maintenance Calculations*, 89 Fed. Reg. 21,199 (Mar. 27, 2024); 20 C.F.R. § 416.1130(b).

necessary companion expenses. Such provisions do not override federal sole-benefit requirements where they apply, but they can reduce unnecessary ambiguity under the instrument.⁶⁴

The document can also provide a mechanism for decisions in which the acting trustee has a personal interest, such as review by a disinterested co-trustee, independent trustee, distribution adviser, trust protector, or other authorized person, subject to governing law.⁶⁵

D. Authorize Expertise Without Freezing Today's Life Into Tomorrow's Trust

The instrument can authorize reasonable use of care managers, benefits counsel, tax and investment advisers, advocates, housing professionals, technology specialists, and others whose expertise may improve administration. Consultation should inform, not replace, fiduciary judgment.⁶⁶

Examples can be useful but should not become limits by implication. Durable drafting depends less on predicting future products than on stating purposes, priorities, standards, and a decision-making structure that can adapt to the beneficiary's life.

The drafting attorney cannot eliminate difficult distribution decisions. The attorney can give the future trustee better instructions when those decisions arrive.

X. Conclusion: What Is the Trust Actually For?

Preservation matters. Trust assets should not be wasted, public-benefit consequences should be understood, and trustees must follow the instrument and their fiduciary duties. But preservation is a means, not necessarily the purpose.

A trust can preserve every dollar of principal and every dollar of SSI while doing very little for the person it was created to serve. At the other extreme, imprudent spending can undermine the beneficiary's future security. The fiduciary's task is to exercise the discretion the trust actually provides, taking into account the beneficiary's circumstances, public benefits, cost, sustainability, and the purposes of the trust.

Success should not be measured solely by the balance remaining at the beneficiary's death or by whether every possible benefit dollar was preserved. The better question is whether the trust was administered prudently and faithfully to serve its purposes and the beneficiary's life.

That brings the analysis back to the question with which it began: What is this trust actually for?

Selected Authorities and Practice Resources

- 42 U.S.C. §§ 1382b(e), 1396p(c), 1396p(d)(4)(A), 1396p(d)(4)(C).

⁶⁴ See SSA POMS SI 01120.201F.3.a–b (addressing collateral benefit, family service providers, companion expenses, and certain third-party travel expenses within SSA's sole-benefit framework). These provisions do not displace the governing instrument or applicable fiduciary law.

⁶⁵ See, e.g., Unif. Tr. Code §§ 802, 808, 814 (Unif. L. Comm'n 2023). The availability and effect of co-trustees, directed powers, distribution advisers, trust protectors, special fiduciaries, and similar mechanisms depend on the governing instrument and applicable state law.

⁶⁶ See Unif. Tr. Code § 807 (Unif. L. Comm'n 2023) (permitting delegation of duties and powers a prudent trustee of comparable skills could properly delegate, subject to duties concerning selection, scope, and review). State enactments vary.

- 20 C.F.R. §§ 416.1102, 416.1121, 416.1130–416.1148.
- 26 U.S.C. § 529A; 26 C.F.R. §§ 1.529A-1, 1.529A-2.
- SSA POMS SI 01120.200, SI 01120.201, SI 01120.203, SI 01130.740, SI 00835.000 et seq.
- CMS, State Medicaid Manual, Chapter 3, §§ 3257–3259.
- Uniform Trust Code §§ 801–804, 807, 814; Uniform Prudent Investor Act § 2.
- Restatement (Third) of Trusts § 50.
- Matter of Abraham XX., 11 N.Y.3d 429, 900 N.E.2d 136 (2008).
- Matter of Mark C.H., 28 Misc. 3d 765, 906 N.Y.S.2d 419 (Sur. Ct. N.Y. Cnty. 2010).
- Marsman v. Nasca, 30 Mass. App. Ct. 789, 573 N.E.2d 1025 (1991).
- Hobbs ex rel. Hobbs v. Zenderman, 579 F.3d 1171 (10th Cir. 2009).
- Special Needs Alliance, A Handbook for Trustees (2023),
<https://www.specialneedsalliance.org/wp-content/uploads/2023/02/SNA-2023-Handbook-02.09.23.pdf>.
- Frederick M. Misilo Jr. & Theresa M. Varnet, Understanding Special Needs Planning, ABA GPSolo eReport (Oct. 2023).
- Jennifer Brannan, Third-Party Special Needs Trust: Dead or Alive in a Uniform Trust Code World, 16 Tex. Wesleyan L. Rev. 249 (2010).