

Special Needs Trust Case Law Update

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2025 → 2.5% Social Security COLA

- MFBR (max SSI): \$943 → **\$967** (\$1,415 → **\$1,450** couples)
- PMV / ⅓ reduction rule: \$334.33 → **\$342.33**
- SGA: \$1,550 → **\$1,620** (\$2,590 → **\$2,700** blind)
- QC: \$1,730 → **\$1,810**
- Maximum SS benefit at FRA: \$3,822 → **\$4,018** (average all retired workers ≈\$1,927 → **≈\$1,976**)
- Trial work period (in 9 of 60 months): \$1,110 → **\$1,160**
- Estate tax exemption: \$13.61 million → **\$13.99 million**
- Gift tax exemption: \$18,000 → **\$19,000** (also for ABLE maximum contributions)

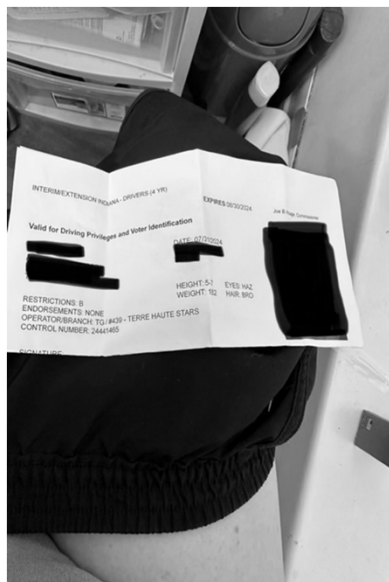
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Application of New ISM Rules

1. The following is from our friend, Avi Sacks:
2. As of September 30, 2024, food will no longer be treated as “in-kind support and maintenance” or ISM.
3. Therefore, food is just another item, like clothing, furniture, appliances, electronics, etc.
4. So, now, a trust can purchase food for the trust beneficiary, just like any of those other items.
4. Be aware, however, that in cases where a trust beneficiary is living with his or her landlord and is paying rent, the rental agreement needs to specify that it includes payment for food so that the trust beneficiary can be regarded as a “head of household” so that the PMV rule is triggered, thus allowing the trust beneficiary to avoid the ISM reduction.

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Sometimes
you get what
you ask for.



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In re Guardianship of James P. Dwyer, (Ohio Ct. of App., July 3, 2024), p. 1

- James is the beneficiary of a third-party SNT established by his parents. His siblings all wanted to be involved in decision-making.
- James has STABLE account and first-party SNT, in addition to third-party SNT. Different siblings managing different things.
- Siblings entered into multiple settlement agreements to try and avoid protracted litigation regarding his care and management of funds.
- Court ruled to remove sister, Maureen, as his guardian and removed her as a fiduciary on some of James' assets, however, Court of appeals held that this had no bearing on whether she could (or should remain trustee of the third-party SNT).

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Background: Black v. Himself, p. 2

- Bernard was surprised by his mother's late-life estate planning changes and determined to undo them after her death.
- Bernard was appointed as conservator for his sister, Joanne, in Colorado, and proceeded to disclaim her POD interests on her behalf. Colorado court imposed \$4.3 million surcharge (we told you about this six years ago).
- Since then, Bernard and his wife, Katherine (they're both law professors) have filed multiple lawsuits in state and federal courts in Colorado, Illinois, and New York. So far, they are batting zero.

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Black as Trustees of Black v. Black, (Ill. App. Ct., Feb. 9, 2024), p. 2

- Bernard and his son, Samuel, as trustees of the Issue Trust, filed a complaint for declaratory judgment naming the beneficiaries of the Issue Trust as defendants in order to guard against actioned “threatened” by other parties to various lawsuits regarding the Trust and to get the court to declare that the disclaimer executed by Bernard was valid and irrevocable.
- Then, after 90 days, the Blacks filed a motion to default the defendants and a motion for summary judgment. The court granted the motion for summary judgment. Bernard’s sisters GAL and a cousin/former trustee filed petitions to intervene and to vacate the summary judgment. After an evidentiary hearing, the Black’s lawyer had to admit that he had not provided notice to the intervenors or their lawyer regarding the original motions or the judgment.
- The trial court granted the petitions to intervene and to vacate, and this was upheld on appeal.

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Agency for Health Care Admin. v. In re Spence, (Fla. Dist. Ct. App., May 22, 2024), p. 4

- Kathleen adopted Ryan. Adoption agreement contained no provision requiring repayment of benefits provided to Ryan.
- Ryan relied on services provided by Medicaid and settlement funds distributed to his self-settled SNT.
- Ryan’s health improved and petition was filed with the Court to distribute all assets from SNT to Ryan. Trial court granted petition.
- AHCA (Florida’s Medicaid Agency) objected. \$50k+ was owed to AHCA for medical assistance payments made on Ryan’s behalf.
- On appeal Court found that trustee was required to comply with trust terms, including payback. Any previous agreement was unrelated to question of reimbursement under the payback provision.

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Hegadorn v. Livingston Cty Dep't of Health & Human Servs., (Mich. Ct. App., October 19, 2023), p. 5

- Medicaid plan involved Mr. H (Community Spouse) transferring resources to an irrevocable trust (under a Michigan law that was later changed), the residual beneficiary of which was a testamentary SNT for Mrs. H (Institutionalized Spouse).
- Dispute with Michigan Department of HHS went up and back through the Michigan court system several times, with the state losing each time since the irrevocable trust was valid under state law at the time it was established and funded.
- Most recently, the Michigan Court of Appeals remanded to the ALJ for a review of the terms of the testamentary SNT.

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Wiedner v. Stevenson, (Cal. Ct. App., May 13, 2024), p. 7 (Unpublished)

- Third-party SNT established FBO Daniel. Aunt Patty was his conservator and his aunt, Charlyne, was trustee (*and* a remainder beneficiary of SNT).
- Battles ensued between Patty and Charlyne re use of SNT funds.
- Daniel's health deteriorated. Out of pocket expenses for his dental care exceeded \$60k. He died before procedures completed.
- Arguments continued after Daniel's death. Court found that the Settlor's intent is relevant when determining whether distributions from SNT are appropriate.
- Intentions were clear: primary use of trust funds was to provide a supplemental and emergency fund for Daniel.

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Williams v. Bambery, (Fla. Dist. Ct. App., May 17, 2024), p. 8

- From 2016 until 2022, Williams served as plenary guardian for Bambery. During that time, Bambery's assets were joined into the pooled SNT for which Williams served as trustee.
- Following Williams' discharge as guardian, the new guardian filed an emergency petition expressing concern that Bambery's assets held in the pooled SNT had been misappropriated. As a result, the new guardian obtained permission to move Bambery's assets to a different pooled SNT.
- Five months later, the court sua sponte entered an order appointing the Florida Division of the Inspector General to do a complete review of ALL of the sub-account of the original pooled SNT.
- Williams filed a petition for writ of prohibition with the appeals court, asserting that the trial court acted in excess of its jurisdiction. The appeals court agreed and quashed the sua sponte order.

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In the Matter of Ellen H. (Cassandra H.), (NY Sup Ct, March 5, 2024) p. 9 (Unpublished)

- Settlement funded SNT for benefit of Cassandra (beneficiary).
- Cassandra lived in group home and her parents were her co-guardians and co-trustees of SNT.
- Parents failed to properly account for use of trust funds. Warning issued by the Court.
- Later, Father switched depository of the annuity payments from the SNT to personal accounts. \$500k+ in annuity payments go to parents. Funds spent to pay creditors, make household improvements (including hot tub), and shopping sprees.
- Surcharge of \$450k imposed on guardian. New trustee appointed.
- Fiduciary duty applies to everyone.

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In the Matter of the Davi H. Kato Special Needs Trust, (NJ Super. Ct. App. Div., February 26, 2024) p. 10 (Unpublished)

- The Katos, natives of Brazil, were visiting NJ and had a son, Davi, who was born with CP. The Katos won a medical malpractice case and established a (d)(4)(A) trust with Cavadas-Cabelo and a bank as co-trustees. Cavadas-Cabelo was chosen because he spoke Portuguese, but it turned out he didn't speak Brazilian Portuguese. This language barrier and other things led to a breakdown in the relationship.
- The Katos ended up moving back to Brazil. They then moved to terminate the (d)(4)(A) trust and create a new irrevocable trust with the same bank and a different individual as co-trustees. Cavadas-Cabelo opposed the motion and requested a final commission of \$72,435.67. The court approved the motion, but reduced Cavadas-Cabelo's final commission to \$31,738.41. Cavadas-Cabelo appealed.
- The appellate court affirmed the order of the trial court but raised the final commission to \$38,086.09

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In re Resignation of Kingsbury, (Ohio, January 12, 2024), p. 11

- Attorney Kingsbury stole \$1,000,000+ from trusts created for the benefit of developmentally disabled and elderly beneficiaries. District Court granted summary judgment to the defendants. Half of the victims died before they could have their day in Court.
- Kingsbury indicted on 4 counts of theft, 1 count of telecommunications fraud, 4 counts of money laundering, and 5 counts of fraudulent actions concerning a tax return.
- While suspended *and incarcerated*, with \$600k owed in restitution, Kingsbury submitted application for retirement.
- Retirement granted. Dissent raised concern that granting an attorney's request to retire when restitution was outstanding benefitted the wrongdoer, at the cost of other attorneys and the general public.

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Matter of Krame, (NY App. Div., Nov. 29, 2023), p. 11

- Attorney trustee had always taken his trustee fees on a percentage basis, but two District of Columbia probate judges insisted that he bill hourly instead. Attorney then got crosswise with both judges, Disciplinary Counsel got involved, and, to make a long story short, Attorney ended up being suspended from the practice of law in DC for 18 months.
- Attorney is also licensed in the State of New York. The New York Supreme Court, Appellate Division, issued an order directing Attorney to show cause why reciprocal discipline should not be imposed upon him in New York. In an unsworn response, Attorney argued that the 13-year disciplinary process in DC had violated his due process rights and that his misconduct in DC did not constitute misconduct in New York.
- The New York court disagreed and decided to suspend Attorney from the practice of law in New York for three years.

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In re Tara Elwell, (Louisiana, February 1, 2024), p. 13

- Uncontested proceeding to appoint successor trustee of SNT.
- Attorney Elwell charged \$100,000+ in fees to SNT for services.
- Fee dispute arose and years of delay and inaction ensued.
- Louisiana Supreme Court had exclusive jurisdiction.
- Court surmised Elwell's inaction was an attempt to avoid the consequences of misconduct, hoping the probationary period arising from the initial dispute would lapse without further consequences.
- Probate now extended to February 6, 2025, unless the fee issue is resolved beforehand.

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