

# Will My Inheritance Ruin My SSI & Medi-Cal?

*Special Needs Trusts*



## **Dear ALRP:**

Recently my mother has taken ill and she wants to leave me a portion of her estate. I'm worried that this inheritance will ruin my eligibility for government benefits. I have AIDS, I receive SSI and Medi-Cal and Medicare. My brother and sister have told my mother that she could leave my inheritance to them and that they would look after me. We've always been close, but my friends tell me that I am putting myself at risk should our relation sour. What should I do?

- *Worried*

## **Dear Worried:**

You've got some great questions, so let's tackle them one by one. As an initial matter, you are correct that your inheritance may affect your eligibility for SSI/SSDI and/or Medi-Cal/Medicare. As a recipient of government benefits, you may not have more than \$2,000 in assets before your eligibility for government benefits will be affected. To avoid this from happening, you have a couple of options. One option, as you mentioned in your question, is to have your siblings take your share of the inheritance. This is known as "disinheritance," and raises some important concerns. Relying on your siblings is a natural part of a strong family, but sometimes, for any number of reasons, this can create serious problems. If your siblings hold assets for your benefit, those assets may be subject to liabilities such as judgments from bankruptcies, divorce or automobile accidents.

Due to these concerns, a newer tool, known as a **Special Needs Trust (SNT)**, has been created to aid people in precisely your situation. In general, a trust is a legal arrangement where property is controlled on someone's behalf. A Special Needs Trust is a specific type of a trust that is created with the purpose of providing extra care beyond that which is received through government benefits. The person must have a mental or physical disability and/or chronic /acquired illness. The funds held in a SNT are for the benefit of the person with the disability or chronic illness and cannot be used for any other purpose. The trust will have its own identity, its own Federal I.D. Number (Employer Identification Number) and will not be linked to a social security number. There is no limit to the amount of assets that may be held in an SNT and those assets are not countable for purposes of determining your eligibility for government benefits.

## **What's the catch?**

Well, the catch is that the money you receive from the SNT must be channeled through a third party, known as a trustee. The trustee is the manager of the trust and will often decide how the proceeds of the trust may provide for your needs. The way it works is that money is distributed to a third person to pay for goods and/or services you use. Monies received from the trust may be used to purchase goods or services that add pleasure to, or increase your quality of life that go

beyond the food, shelter, clothing, and medical care benefits that your government benefits were meant to provide for. SNT qualified expenditures may include transportation (including buying a car), insurance (including premiums), hobby/recreational materials, computer/electronic equipment, vacations or entertainment expenses (ballgame or theater tickets), among others.

To address your situation, your mother should consider setting up an SNT on your behalf when she draws up her will. Having an SNT will require that your mother appoint a trustee. A trustee should be selected based upon his/her ability to manage money and with longevity in mind (the SNT may last for many years). That being said, the SNT should be drafted in such a way as to direct the trustee to use the proceeds of the trust for your individual needs and be flexible enough to adjust to your changing circumstances.

As you can see, the creation of a trust requires consideration of multiple factors. Because the laws regarding trusts are complex, you and your mother should consider speaking to an attorney that specializes in Special Needs issues to ensure that the SNT is drawn up in a manner that won't affect your eligibility for government benefits.

**This Legal Q&A Guide was last revised in July 2011.** It is intended to provide general legal information to people living with HIV/AIDS in California. However, because laws change frequently ALRP cannot ensure the complete accuracy of the information included. Please call ALRP at (415) 701-1100 to consult with an ALRP attorney about your legal rights in your particular situation.