

LK Alert

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MEDICAID RECIPIENT MAY NOT SHELTER NAMI BY PLACING IT INTO AN SNT

On June 22, 2009, the United States Court of Appeals for the Second Circuit decided the case of *Wong v. Daines*, holding that income placed into a Special Needs Trust (“SNT”) may be considered by the local Medicaid agency in determining the extent of benefits to which a Medicaid recipient is entitled.

This case involved a nursing home resident (“Wong”) under the age of 65, for whom Medicaid benefits were paid towards his cost of care. Wong’s guardian later created an SNT for his benefit and began depositing Wong’s monthly SSDI income into the SNT. Despite the deposit of the SSDI income into the SNT, the local Medicaid agency continued to budget the SSDI towards Wong’s cost of care as part of his Net Available Monthly Income (“NAMI”). Wong’s counsel opposed the actions of the Medicaid agency in continuing to include the monthly SSDI income in Wong’s NAMI. In affirming the decision of the District Court, the Court of Appeals wrote that “we discern no inconsistency in a statute that provides that an individual may create a Special Needs Trust with SSDI income, but leaves it to the agency to determine how to treat the income contained in such a trust—whether from SSDI or any other source, for purposes of Medicaid eligibility and post-eligibility determinations.” In view of *Wong*, it is now clear that a Medicaid recipient may not shelter properly budgeted NAMI by placing the income into an SNT.

Littman Krooks LLP encourages you to share this LK Alert with anyone interested in the issues discussed herein. Please contact Nicole Garcia at (212) 490-2020 or (914) 684-2100 if you are interested in having an attorney from Littman Krooks LLP speak at your facility. Littman Krooks LLP offers legal services in several areas of law, including Accounts Receivable Management, Medicaid, Health Care, Guardianship, Elder law, Estate and Tax planning, Public Benefits, Estate Administration/Probate, and Trusts and Estates.

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