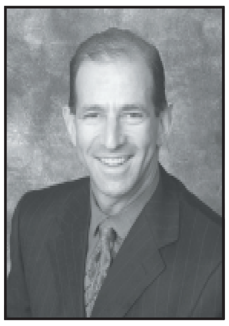
Dutchess County

PLANNING FOR YOUR FUTURE

UTMA and 529 accounts for a child with special needs

By Bernard A. Krooks, Certified Elder Law Attorney

Charlie has cerebral palsy. He was approved for SSI and Medicaid when he turned 18. His father, Sam, disclosed to the Social Security Administration at the time of application that Charlie had $30,000 in an UTMA ("Uniform Transfers to Minors Act") account, and $20,000 in a 529 Plan. Social Security assured Sam that the UTMA and 529 Plan would not affect Charlie's eligibility for SSI benefits.



Charlie is now 25 years old and recently received $3,000 from the 529 Plan. The distribution was properly reported to the Social Security office. Unfortunately, Charlie received a notice from the Social Security Administration that he was ineligible for SSI because of his UTMA account and he would have to repay two years of SSI benefits totaling over $14,000. Charlie and his father were surprised. Sam disclosed the UTMA and 529 Plan when Charlie first applied for SSI and he and Charlie are both diligent about complying with all of SSI's rules. Charlie and his father are now concerned that the 529 Plan as well as any distribution from the account could cause additional problems.

What is an UTMA account: A Uniform Transfer to Minors Act or UTMA account is an account set up to hold money that is gifted to a child who has not yet reached the age of majority. The account is controlled by a custodian designated by the person who originally set up the account. In New York, the UTMA account terminates when the child turns 18. When the account terminates, the funds are legally available to the child.

What is a 529 Plan: 529 Plans allow an individual to contribute to an account established for a designated beneficiary's post-secondary education expenses at an eligible educational institution. 529 savings plans can be established for a beneficiary of any age.

How does SSI treat UTMA accounts: Social Security does not count an UTMA account established by a third party as a resource for SSI purposes until the account is considered available under state law. Any distribution of cash to the child from the account would be counted as income to the child for that month. SSI does count the UTMA account as an available resource in the month in which the child reaches majority.

Unfortunately, the Social Security Administration does not remind parents when their child is close to the age of majority that a UTMA account will now be counted as an available resource. In Charlie's case his UTMA account of $30,000 made him ineligible for SSI and Medicaid as of his eighteenth birthday when state law determined that the account was available.

How does SSI treat 529 Plans: 529 Plans are usually owned by the person who funded the account, typically a parent or grandparent. In most cases, the designated beneficiary (in this case, Charlie) is not the owner and does not have any right to withdraw funds in the account. So Charlie's 529 Plan will not be treated as a resource that would disqualify him from receiving SSI. Assuming Charlie is on SSI, distributions from the 529 Plan that are used for educational expenses of the designated beneficiary are excluded as income in the month of receipt. Educational expenses do not include food or shelter for the student. The $3,000 Charlie received from the 529 Plan that is spent on tuition and fees will not be treated as income to Charlie; thus, his SSI will not be reduced or eliminated.

Missed opportunity: Before Charlie turned 18 the UTMA account could have been transferred into a special needs trust for Charlie's benefit. The trust would be required to have a "Medicaid payback" since the trust would be funded with Charlie's own money. After Charlie repays the Social Security Administration for the overpayment he will transfer his remaining funds into a special needs trust so that he can re-qualify for SSI as of the first of the next month. Unfortunately, it is too late to save the $14,000 that must be repaid to the Social Security Administration for the overpayment. In most cases the Social Security Administration will limit an overpayment to two years of SSI benefits if it agrees that the SSI beneficiary was not at fault in causing the overpayment.

Lessons learned:

• Parents, financial advisors and legal counsel should review any UTMA accounts for a child with special needs who is approaching the age of majority. Serious eligibility issues with government benefits can be avoided by transferring the UTMA account into a special needs trust before the account is available to the child under state law.

• 529 Plans for a child with special needs may provide significant flexibility to parents or grandparents depending on their situation. As long as the account owner and SSI beneficiary are careful to apply distributions to education expenses, these accounts can help pay for post-secondary schooling and training without affect the child's SSI benefits. If the account owner determines that the special needs child is unlikely to use the funds for education expenses, the owner can change the designated beneficiary to a member of the beneficiary's family.

• If a parent or grandparent wants to provide for educational expenses for a child living with disabilities, the 529 Plan is probably better than the UTMA account simply because the 529 Plan will never become an available resource as happened to Mark when he turned 18. A properly managed 529 Plan can provide for educational opportunities throughout the child's life and not be a resource to the child.

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