

## Disability and Wills

I do not do wills, probate, or disability benefits law, but I think my question falls within these areas. My sister-in-law is disabled and has been since she was 7. Her father from CT recently died and left a will specifically disclaiming any inheritance to her and her brother. He was an absent father and made it clear he did not want any relationship with her or her brother. However, the executor wants to give some money to my sister-in-law and brother-in-law.

My sister-in-law receives monthly Social Security Disability payments. She is also on the Star Plus Medicaid Program that covers her medications and many medical co-pays. The program is administered by the State of Texas. In the past, she received SSI in the state of Louisiana, and also maybe Arkansas. If my sister-in-law receives money from the executor, do these governmental agencies have a right to that money?

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Disregarding the question of whether the Executor can do this, the answer is "Yes, probably, unless the distribution is properly protected by a Special Needs Trust." I'm interpreting "rights to that money" broadly, meaning that she may or may not seek to recover from it, but she may be disqualified from some or all benefits for a period of time based on the amount of the distribution.

She (or her guardian) should consult with a special needs or elder law attorney local to her.

-Rick

Richard J. Rutledge, Jr., North Carolina

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You (or someone on behalf of your sister-in-law) need to consult a lawyer who specializes in disabilities law in the jurisdiction(s) in which your sister-in-law resides/receives money relating to her disability from . Receiving "extra" money outright may get her kicked off the assistance programs. It may be worthwhile for someone to make a special needs trust for her.

Naomi C. Fujimoto, Hawaii

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This is really not an area to dabble in.

First of all, the executor has no right to give some money to someone not in the will. If the executor is a beneficiary, he/she could give a gift of any of money to the brother/sister.

Second, you mention Social Security Disability, which is not a means based program and is totally different than SSI, which you also mention. SSI has a resource test of \$2000. I don't know the Medicaid test in Connecticut for means. New York has a number of Medicaid programs and not all of them have resource tests, although all of them have income tests. Violating those tests could cause the beneficiary of the program to lose their benefits.

There are ways of gifting money. The grantor can set up a special needs trust. If the recipient is collecting SSI and Medicaid, the applicable agency may need to approve the trust before it can be funded.

Ellen Victor, New York

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If she gets the money they will offset her benefits.

For SSI she will have to pay down the asset to be under the allowable amounts before her benefits will start again.

For medicaid she may have a monthly paydown amount until the asset is gone.

SSI is a federal program

If she has been disabled since she was 7 and has never been married, she may be eligible for Disabled Adult Child benefits on one of her parents account (she can claim on dad since he is dead) who was a covered person who is either deceased or retired. If she is eligible for DAC or getting DIB (NOT SSI) then the asset would have no effect on THAT benefit, but could still affect the others.

Erin M. Schmidt, Ohio

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Thanks everyone for the responses! Yes, I do plan to help her find a disability attorney who can help. No, I do not want to dabble in this area.

:) I have asked my local network for names, and if any Sezzer is a disability attorney in Texas, please let me know.

The executor is the long-time girlfriend of the deceased father. She is a

beneficiary and wants to give my sister-in-law some money out of her own inheritance and generosity. I mentioned this b/c I would think that if the will disclaims an inheritance to sister-in-law, and executor is simply giving her money, then that money would not be considered an inheritance. I didn't know if labeling the money as inheritance would have any effect on whether the governmental agencies can have rights to the money.

The special needs trust sounds like a good idea.

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Your sister in law should contact Pamela Parker--she focuses on special needs.

512-804-9934

\*Email:\* [fearlessattorney@gmail.com](mailto:fearlessattorney@gmail.com)

Rob,

You should contact Bob Kraft. He's in Dallas/Fort Worth but I'm sure he'd tell you the best SS Disability attorney in Austin:

\*Kraft & Associates Attorneys at Law, P.C.\*

2777 Stemmons Freeway

Suite 1300

Dallas, Texas 75207

(214) 999-9999

(817) 999-9999

(800) 989-9999

FAX (214) 637-2118

E-mail: [info@kraftlaw.com](mailto:info@kraftlaw.com)

Ellen Victor

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Renee Lovelace is THE Texas special needs guru. I think she's in Marble Falls -- just Google her.

Sasha Golden, Massachusetts

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Because I am (or may have a reputation for being) nitpicky at times (as in pointing out that there is no law called "HIPPA"), I would note for the edification of all that "Social Security" as an administrative branch of the government, and they administer several programs, including:

- Social Security Retirement
- Social Security Disability
- Supplemental Security Income
- Medicaid
- Medicare
- and others.

A discussion of "Social Security payments" really requires more information

to have a meaningful discussion.

Having one of those days (nothing personal),

-Rick

Richard J. Rutledge, Jr.

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SSA has nothing to do with Medicaid

They only deal with retirement/disability, SSI and Medicare, plus the auxiliary benefits that stem from those programs

Medicaid is a state program

Erin M. Schmidt

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Medicaid is part state, part federal.

Naomi C. Fujimoto

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In many states, like mine if you qualify for even \$1.00 of SSI you get your Medicaid from SSA-

Patti Dudek

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I specified "Social Security Disability payments" and "Star Plus Medicaid Program," which is administered by the State of Texas in my original post.

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As there are still people who do not believe me that SSA does not run Medicaid.

Medicaid was created in 1965 under amendments to the Social Security Act. This does NOT make it a Social Security run program (but the act does allow information to pass between the two pretty easily and there are lots of connections, such as state rules for Medicaid that copy SSA rules on disability)

Medicaid is administered by health and Human Services. The centers for Medicare and Medicaid oversee the state programs. It also administers Medicare, but SSA is heavily involved in that because of requiring SSA eligibility for eligibility for Medicare - so you do your application for Medicare with SSA and can get information from SSA about Medicare

Medicaid, on the other hand, does still have a close relationship with SSA. In many states, you only have to do a single application to apply for both SSI and for Medicaid. In all states, telling the Medicaid office, family services (apply for food stamps) or the hospital that you intend to also apply for SSI protects your SSI filing date as of that date. But you cannot go to SSA to just apply for Medicaid because SSA does not do Medicaid) only to apply for SSI (which they would then forward a Medicaid application to Medicaid). This does not make the program administered,

ran, or anything by SSA. SSA employees will not have much information on Medicaid if you talk to them.

Further, in most states the state agency that handles Medicaid is also the state agency SSA contracts with to do initial/recon cases for disability.

Lots of blending between the 2, but 2 very distinct programs ran by 2 different agencies.

And if you STILL do not believe me, that is fine. Just go to the SSA website and look under their list of programs.. no Medicaid. Can't apply for it online and the information provided from the website or if you talk to a local office is very limited.

BTW you can apply, on the SSA website for ALL disability benefits (except SSI because it's not online yet and we don't know when, if ever, it will be) and can apply for Medicare coverage online

Erin M. Schmidt

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And to add to my long diatribe on why many are confused.

Up until March 1, 1995, Social Security was a department under, you guessed it, Health and Human Services.

But when they spun off SSA to its own agency, they did not spin off



Medicaid with it. That stayed with HHS.

For history see

<http://www.ssa.gov/policy/docs/ssb/v58n1/v58n1p57.pdf>

Which states what SSA is responsible for (Old age, disability, black lung, survivors and SSI) and in assisting in the administration of Medicare

Erin M. Schmidt

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Medicaid is a federal program, administered by states.

Julie Mills

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