

The Golden State Pooled Trust Policy and Procedure Manual



Golden State Pooled Trust

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update go to

www.gspt.org

The Golden State Pooled Trust Policy and Procedure Manual

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Background

What is a Self Settled Pooled Special Needs Trust - Background

To appreciate a pooled special needs trust one needs to understand special needs trusts in general. Special needs trusts are basically arrangements where funds can be held for a Supplemental Security Income (SSI) or Medi-Cal recipient without losing eligibility. The Social Security Administration (SSA) describes a valid special needs trust as "a trust in which the trustee has full discretion as to the time, purpose and amount of all distributions." If the beneficiary has no discretion over the distributions, the trust is not counted for SSI or Medi-Cal eligibility. The special needs trust cannot give cash directly to the beneficiary, but can pay for services and certain exempt resources directly without causing a loss of benefits eligibility. Keep in mind that special needs trusts by nature mean a loss of control by the trust beneficiary.



WHAT IS A POOLED SPECIAL NEEDS TRUST?

- ✦ Special needs trusts are basically arrangements where funds can be held for a Supplemental Security Income (SSI) or Medi-Cal recipient without losing eligibility.
- ✦ A pooled special needs trust is somewhat like a cross between a 401k and a traditional special needs trust.
- ✦ A beneficiary does not get their own trust document, but instead joins the trust and establishes an individual account for their sole benefit.

A pooled special needs trust is somewhat like a cross between a 401k and a traditional special needs trust. A beneficiary does not get their own trust document, but instead joins the trust and establishes an individual account for their sole benefit. The account is then administered like any other special needs trust. In many cases, the Golden State Pooled Trust can be a cost effective tool to preserve eligibility for needs based benefits such as Supplemental Security Income (SSI) or Medi-Cal (Medicaid), but beneficiaries are required to seek counsel from an attorney experienced in counseling clients about maintaining eligibility for benefits prior to joining the

Golden State Pooled Trust. If you are considering joining the Golden State Pooled Trust and do not have an attorney to counsel you, the Golden State Pooled Trust website has a listing of attorneys at www.gspt.org who can advise you what option best suits your needs.

History of Self Settled Pooled Trusts - the OBRA 93

In 1993, Medicaid worked through Congress to establish limits through the Omnibus Reconciliation Act of 1993 (OBRA 93) to discourage the use of Medicaid Qualifying Trusts and other devices to assist seniors to qualify for nursing home services. These trusts are called “Self Settled” because the funds held by the pooled trust were originally owned by the benefits recipient. Within the Omnibus Reconciliation Act of 1993 Congress granted specific exceptions for Medicaid recipients to enable them to place their own funds in a self settled pooled special needs trust for their own benefit without losing eligibility. Essentially, OBRA 93 caused the utilization of a trust to qualify for Medi-Cal forbidden with certain exceptions.

The relevant sections of 42 USC 1396 p (d) for our purposes read as follows:

(4) This subsection shall not apply to any of the following trusts:

(C) A trust containing the assets of an individual who is disabled (as defined in section 1382c (a)(3) of this title) that meets the following conditions:

(i) The trust is established and managed by a non-profit association.

(ii) A separate account is maintained for each Beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1382c(a)(3) of this title) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

In 1999 the Foster Care Independence Act of 1999 was enacted and added Section 1613 to the Social Security Act which imposed the OBRA 93 transfer penalty exception for the SSI program by incorporating the trust exemptions under 42 U.S.C. § 1396p(d)(4)(C).

Medi-Cal Payback Requirement

A key element of a self settled pooled special needs trust is the requirement that upon the death of the beneficiary, Medi-Cal must be paid back from all funds remaining in the Individual Account, up to an amount equal to the total amount of medical assistance paid on behalf of that individual by the Medi-Cal program to the extent that funds remain in that individual's account and are not retained by the trust to cover management and investment fees associated with that account. In essence, when a beneficiary joins a pooled trust he or she is making a bargain with the government to retain their public benefits, and upon the beneficiary's death, the State of California will be paid back for any Medi-Cal that was used during the beneficiary's lifetime. The Medi-Cal payback does not include any SSI, Social Security Disability, or Medicare the beneficiary used. In the event the funds are exhausted, no payback is required, although assets owned by the beneficiary may be subject to Medi-Cal Estate Recovery. (See the Chapter entitled Procedures Upon the Death of a Beneficiary).

Examples Where a Self Settled Pooled Special Needs Trust Might Be Used

Below are some examples of some of my clients that have benefited from utilizing a pooled special needs trust.

Helen, who is 58 years old, receives an unexpected inheritance of \$60,000 from her aunt. She is receiving SSI and Medicaid. Loss of her Medicaid would cause her great hardship. She has no parent or grandparent alive, and to establish a self settled special needs trust would require a court order. Setting up a court ordered Special Needs Trust would cost \$5,000 to \$7,000, take 3 months or longer, and would require costly court supervision. Helen could instead join a Pooled Special Needs Trust at a fraction of the cost, have professional administration of the account, and avoid court supervision.

John has Multiple Sclerosis, and owns a residence that he lives in valued at \$400,000. He wants to sell the home and purchase a smaller residence for \$100,000. John would like to use the balance to pay for his care. Both SSI and Medi-Cal to allow a Benefits Recipient to own a residence of any value, but if John retains more than \$2,000 in his own bank account, he will have a loss of eligibility. If John does not have a parent or grandparent alive, he would be faced with a costly and time consuming legal procedure to authorize the establishment of a Self Settled Special Needs Trust. John could put the balance of the funds in a Pooled Special Needs Trust and then use the account to pay for his care that is not covered by Medi-Cal. If the trust pays for his attendant care directly, there will be no loss of his benefits.

Jane is the recipient of a civil rights settlement totaling \$50,000. Her wish is to use the funds to go to law school with the hope that someday she can get off public benefits. She placed her funds in the Pooled Special Needs Trust, and the trust is paying her tuition and buying her books. Her goal is to get a job with good medical benefits and not be reliant on public benefits for the rest of her life.

Sam is 67 years old and has become disabled because of a work related injury. He is receiving the maximum SSI, and Medi-Cal. Sam is going to receive an award of \$64,000. Sam is receiving Medically Needy Medi-Cal and feels it is unlikely that he is going to need to be in a nursing home so long as he has dependable attendant care. A Self Settled (d) (4) (A) Special Needs Trust is not an option because he is over the age of 65. The Pooled Special Needs Trust will pay for his attendant care directly.

Albert has Cerebral Palsy and receives SSI, and Medi-Cal. He inherited \$120,000 directly from his father. He wants to use the funds to purchase a residence but he is not prepared to purchase the home at this time. He estimates that it will take 9 months to qualify for the program. Albert places his funds in a Pooled Special Needs Trust and uses \$80,000 towards a down payment. The remaining funds are retained to pay for maintenance.

Updated March 12, 2010

Joinder Agreements

Execution of Joinder Agreement

A joinder agreement is the contract that enrolls the beneficiary as a participant in the Golden State Pooled Trust. The agreement is between the Golden State Pooled Trust and the beneficiary (or the beneficiary's legal representative). The joinder agreement establishes an individual account with the trust for the sole benefit of a beneficiary. The joinder agreement also contains information about the beneficiary, the beneficiary's legal representative (if any), the beneficiary advocate, information about the rights and obligations of the parties and any final remainder beneficiaries.

Irrevocable Contribution

State and Federal law requires that the assets contributed to the individual account be irrevocably assigned and only used for the sole benefit of the beneficiary. It is very important for any potential beneficiary joining the Golden State Pooled Trust that they understand the benefit and limitations of joining any pooled special needs trust and that by execution of the joinder agreement the beneficiary is relinquishing control over the assets in the individual account.

Counsel by Referring Attorney

The policy of the Golden State Pooled Trust is that all potential beneficiaries shall be counseled by an attorney or the trustee prior to joining the Golden State Pooled Trust to ensure that the beneficiary understands what his or her options are. The disability community is very diverse and in many cases there are many ways to maintain eligibility for benefits and there may be situations where joining a Pooled Trust may not be the best option for a benefits recipient.

One of the primary purposes of this trust is to provide a viable option for persons with disabilities that desire to preserve their needs based benefits without the need of a court order. This trust is inappropriate without a court order unless the beneficiary has capacity to execute the agreement. One of the duties of the referring attorney is to make that determination at the time of joining the trust. Each of the attorneys that refer cases to the Golden State Pooled Trust are independent attorneys and are encouraged to explore the least restrictive and cost effective alternatives prior to assisting beneficiaries to join the Golden State Pooled Trust.

In most cases the first disbursement from the trust is for the attorney fees incurred by the beneficiary for this counseling service. Please keep in mind that the referring attorney is not an employee of the Golden State Pooled Trust, nor does the Golden State Pooled Trust set the referring attorney's fees.

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Individual Accounts

Management of Trust Individual Accounts

The California Department of Health Services has a lien for any Medi-Cal used by the beneficiary during the beneficiary's lifetime, subject to state and federal statutes and case law. Therefore, the law requires the Golden State Pooled Trust to segregate each beneficiary's funds held in an "Individual Account" for the beneficiary's sole benefit. A basic concept of each account is that expenditures may only be made for the sole benefit of that beneficiary. The trustee may pay for a beneficiary's supplemental services from the assets of an individual account up to the entire account as the trustee, in its sole discretion, may from time to time deem advisable for the beneficiary under the guidance of the beneficiary advocate.

Investments

Federal law allows the pooling of investments but the Golden State Pooled Trust invests each individual account separately. The accounts are invested by an investment advisor with Wells Fargo Bank. The chapter on investment management is discussed in more detail later in this manual.

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Beneficiary Advocate

In order to make distributions for the beneficiary, there must be someone to advise the trustee what expenditures need to be paid for the beneficiary's needs. This person is called a beneficiary advocate. The beneficiary advocate is designated at the time the joinder agreement is signed, subject to the approval of the trustee and/or the executive director of the Golden State Pooled Trust. Upon execution of the beneficiary advocate acceptance of duties form, the beneficiary advocate shall act as the trust beneficiary's representative and all decisions made by the beneficiary advocate is binding upon the trust beneficiary and the remainder beneficiaries. Golden State Pooled Trust and the trustee shall rely on the representations of the beneficiary advocate as if made by the trust beneficiary. The beneficiary advocate is given great deference in directing the trustee about what distributions should be made, but ultimately the trustee has final authority and has sole and absolute discretion in all matters as required by state and federal law.

Removal and Replacement of Beneficiary Advocate

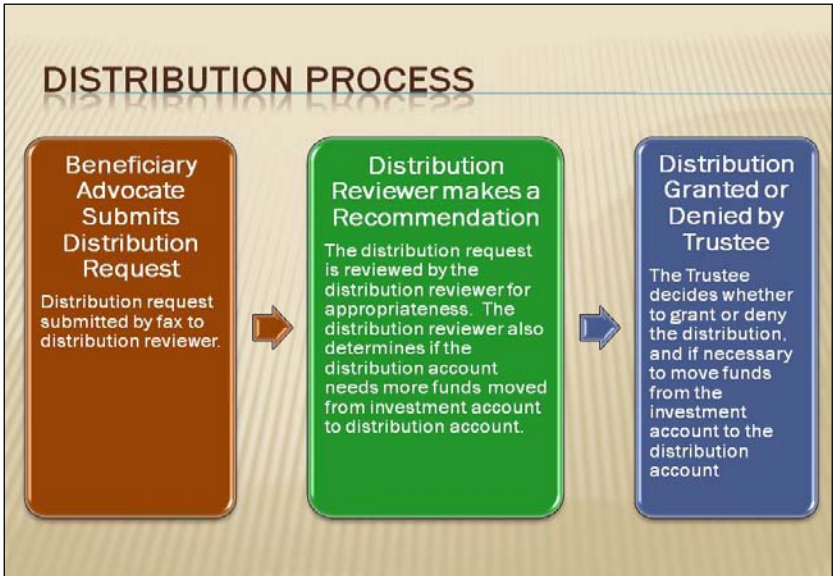
The beneficiary shall not normally serve as his or her own beneficiary advocate. However, if the trust beneficiary acts as his or her own beneficiary advocate, the Golden State Pooled Trust and/or the trustee may, in its discretion, remove him or her from acting as their own beneficiary advocate if the Golden State Pooled Trust Executive Director and/or the trustee believes the beneficiary is not acting in their own best interest or is not able to effectively fulfill the duties of the beneficiary advocate. The successor beneficiary advocate shall then assume responsibility of acting as beneficiary advocate for trust beneficiary. In the event that there is no successor beneficiary advocate named in the joinder, or is unwilling to act in this capacity, the executive director of the Golden State Pooled Trust or the Trustee may request an assessment and/or ongoing support from professional care manager, social worker, fiduciary, or other-

wise qualified individual to serve as beneficiary advocate. Expenses shall be paid out of trust beneficiary's individual account.

Disbursement Requests

Process of Submitting a Disbursement Request

It is important to keep in mind that the trustee has sole and absolute discretion for all disbursements as required by state and federal law. The Golden State Pooled Trust is not merely a bill paying service and is required to exercise discretion over each and every disbursement. All disbursements are processed after the beneficiary advocate submits a disbursement request. The purpose of the disbursement request is to assist the distribution coordinator in determining whether the disbursement is allowable, and to document the disbursement in the event of an audit or review by Social Security or Medi-Cal. If the beneficiary advocate is in doubt about whether a disbursement will be paid, the beneficiary advocate should get preapproval of disbursements. One way of doing this is to have a disbursement plan preapproved by the trustee.



The best method of making a disbursement request is to submit the request by fax. If the beneficiary advocate does not readily have access to a fax machine, then it is highly recommended that he or she purchase one and submit a disbursement request for reimbursement. Disbursement requests are to be faxed to (888) 794-4778.

Documentation Required with a Disbursement Request

In order for the distribution coordinator to authorize a disbursement, the distribution coordinator must be able to identify what the purchases are for in order to ensure that the distribution is appropriate and does not violate State or Federal Law.

Methods of Identifying Purchases

It is essential that the each and every distribution be identified and documented before that distribution can be paid. Failure to identify what a distribution is made for not only jeopardizes the beneficiary's benefits, but could jeopardize the benefits of the other beneficiaries of the trust. Therefore, if the reviewer cannot determine the nature of the purchase based upon the invoice or statement itself, the disbursement cannot be authorized. Backup documentation can be satisfied preferably by submitting receipts for the item purchased.

In the event that the distribution coordinator cannot determine what the distribution is for, the distribution coordinator will contact the Beneficiary Advocate for further clarification. The distribution coordinator may ask the Beneficiary Advocate for a verbal or written declaration.

The Beneficiary Advocate Should Keep Documentation of Disbursement for Their Own Records

It is the responsibility of the beneficiary and/or the beneficiary advocate to maintain documentation of any disbursements in the event of an audit by Social Security, Medi-Cal or other agencies. The Golden State Pooled Trust will, to the best of its ability, review disbursement requests in order to ensure that the distribution is allowable. Even so – the beneficiary and the beneficiary advocate should keep all receipts and backup information in the event that the beneficiary's eligibility for benefits is later reviewed by Social Security, Medi-Cal or other agencies.

Disbursement Categories

Beneficiaries on SSI have three categories of distributions that can be made without causing ineligibility.

1. **Excluded Resources.** Examples include the purchase of an automobile, furniture, or a residence for the beneficiary.
2. **Food and Shelter.** Distributions for the beneficiary's food and shelter will cause a slight reduction in benefits. Examples include payment of rent, electricity, groceries, restaurant, water bills, or mortgage payments. Generally a beneficiary who receives Medi-Cal not based on SSI eligibility has more liberal rules concerning food and shelter.
3. **Services.** Examples include payments for attendant care, housekeeping, auto repair, and yard maintenance of the beneficiary's residence.

Excluded Resources

SSI and Medi-Cal limit the amount of cash that a benefit recipient may have to \$2,000 on the first moment of the first day of any calendar month. If the benefit recipient is married, then the couple is limited to \$3,000. In addition, the beneficiary is allowed to have certain exempt resources which are excluded from the \$2,000 limit. These excluded resources are not counted in determining eligibility, and the benefit recipient's ownership of them will not put the SSI benefits at risk. Therefore, the beneficiary advocate may freely purchase excluded resources for the beneficiary and give them to him or her (except for food and shelter, as explained below). The beneficiary advocate cannot give the beneficiary the money to purchase excluded resources or reimburse the beneficiary with cash. Payments of cash are always considered countable income as explained below. The following assets are exempt:

- A home, including adjacent land, if the beneficiary lives in it or intends to return to it.
- One automobile, regardless of value, if it is used for transportation for the individual or by a member of the individual's household.
- Life insurance with a cash surrender value, if its face value is less than \$1,500, and all term life insurance.
- A burial plot, or other burial space, worth any amount.
- A revocable burial fund, worth up to \$1,500.
- Household goods (furniture, furnishings, household equipment, household supplies), and personal effects (toiletries, items of personal care and education, clothing and jewelry).

All the assets above are specifically exempted by law from interfering with a benefits recipients eligibility SSI. The beneficiary advocate might note that a number of common and useful items are not specifically mentioned as exempt in the SSI regulations, but are not counted because they are included among "personal effects" or

are services. These include: recreational equipment, games and crafts, books and magazines, telephone, answering machine, television, radio, computer, internet service, and cable service, musical instruments and stereo, travel and education, recreation and entertainment, and some home maintenance, such as gardening.

Distributions That Are Not Allowed

A self settled trust, including a pooled special needs trust must be used for the sole benefit of the beneficiary by federal law. The following items are not allowed.

- Gifts to other individuals
- Items that are held because of their value or as an investment (referred to as other personal property by the Social Security Administration)
- Reimbursements directly to the beneficiary even if the item is an allowable expenditure. This includes payment the beneficiary's checking account but does not include payments made to the beneficiary's credit cards.

Other Personal Property - Items Held for their Value or as an Investment

Under the SSI and Medi-Cal programs, benefit recipients are allowed to have household items without a restriction *unless the item is held because of their value or as an investment*. Specifically, the SSA says, "Other personal property items include, but are not limited to, gems acquired or held because of their value or as an investment, jewelry that is not worn or held for family significance, and collectibles acquired or held because of their value or as an investment."

The Social Security Administration's procedure manual, called the Program Operations Manual, often referred to as the POMS, gives this example at POMS [SI 01130.430I](#) for how their claims representatives (CR) evaluates whether a benefit recipient's

ownership of personal property is excluded as household goods or personal effects.

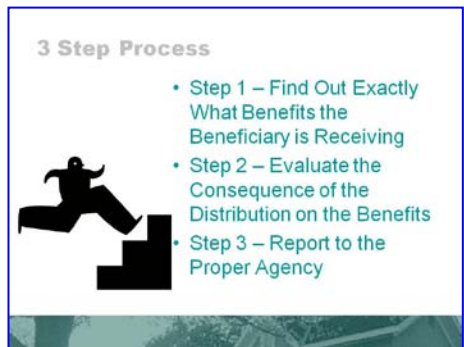
Mr. Hollenback received \$10,000 from an insurance settlement. The CR (Claims Representative) later develops how he spent the \$10,000. Mr. Hollenback paid back creditors with \$7,000 and purchased \$3,000 in jewelry that he ordinarily wears. Because Mr. Hollenback wears the jewelry, the jewelry is excluded from resources as personal effects or is a countable resource in the form of other personal property. Mr. Hollenback's statements establish that the jewelry has no family significance and that he purchased the jewelry for its value as a means to spend down the \$10,000. The CR correctly determines that the jewelry is not an excludable personal effect because an item purchased for its value cannot be a personal effect. The CR also correctly determines that the jewelry is other personal property and evaluates it using normal resource counting rules.

Paying for Food and Shelter

How Does the Golden State Pooled Trust Process a Request for Food or Shelter?

Securing appropriate housing for all persons with disabilities in California is a challenge. The Golden State Pooled Trust will allow a Beneficiary Advocate to pay for a beneficiary's food and shelter when the expenditure is in the beneficiary's best interest.

When a request is submitted for payments for food or shelter, the distribution coordinator will analyze the request and make a recommendation to the trustee. If the request could possibly cause a reduction in benefits, the beneficiary advocate is contacted and will be asked for a signed acknowledgement that the payment will cause a reduction of benefits and the beneficiary is required to report the payments to SSA. The distribution coordinator will only authorize the payment after the beneficiary and beneficiary advocate evaluate the affect the expenditure on the beneficiary's eligibility for benefits and makes an informed decision about the consequences of the distribution.



If the primary purpose of the account is to pay rent, then the beneficiary should sign the acknowledgement at the time of joining the trust. Keep in mind, the Golden State Pooled Trust is not responsible for reporting to SSA, the responsibility is on the beneficiary or the beneficiary's representative payee.

3 Step Process

There are many publications that suggest that a Special Needs Trust cannot pay for food or shelter items. In reality Pooled Special Needs Trusts can be used for food and shelter – but first the Beneficiary Advocate must follow this 3 step process.

- Step 1 – Find Out Exactly What Benefits the Beneficiary is Receiving
- Step 2 – Evaluate the Consequence of the Distribution on the Benefits
- Step 3 – Report to the Proper Agency

Step 1 - Determine What Benefits the Beneficiary is Receiving

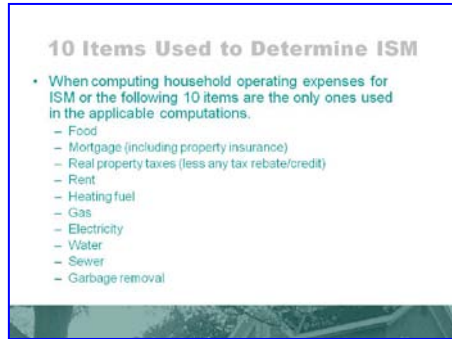
In most cases maintaining eligibility for Medi-Cal and IHSS (In Home Support Services- a program that provides attendant care services) is of primary importance for the beneficiary's well being. In many cases the beneficiary accepting financial assistance for their food and shelter can affect eligibility for these programs. The first question that must be analyzed is whether eligibility for these benefits is based on SSI or Medi-Cal rules.

Step 2 – Evaluate the Consequence of the Distribution on the Benefits

There are 2 common methods of qualifying for Medi-Cal. The most common method of qualifying for Medi-Cal is by receiving at least one dollar of SSI. This is what is commonly called Categorical Eligibility. Another way of qualifying is through the Aged & Disabled Federal Poverty Level Program or Medi-Cals Share of Cost program.

Beneficiaries Receiving Medi-Cal Based on SSI Eligibility

California participates in what is commonly called the Categorical Eligibility Program for Medi-Cal Eligibility. What this means is that if a SSI benefit recipient receives at least one dollar of SSI, then they automatically qualify for Medi-Cal.



Under the SSI program, payment of food or shelter from the trust account will reduce the beneficiary's SSI eligibility dollar for dollar capped at what is called the Presumed Maximum Value (PMV). In 2010 – the PMV is \$244.66. This amount changes slightly each year. In some cases, a loss of \$244.66 is a minor price to pay and in other cases the reduction could be harmful.

10 Items Used to by SSI to Determine ISM

Assisting a SSI recipient with food or shelter is referred to as In-kind Support and Maintenance, or ISM. For purposes of determining ISM, the following 10 items are the only items considered by regulation.

- Food
- Mortgage (including property insurance)
- Real property taxes (less any tax rebate/credit)
- Rent
- Heating fuel
- Gas
- Electricity
- Water
- Sewer

- Garbage removal

Example Where Payment of Rent Might be Advisable

Jane receives \$845 of SSI. She asks Bob, her Beneficiary Advocate, to have her Golden State Pooled Trust Individual Account pay her rent of \$1,200. Jane understands that her benefits will be reduced by \$244.66 – but she feels that the benefit of living in a decent apartment outweighs the reduction of her SSI.

Bob submits the distribution request with a signed acknowledgement from Jane that she understands there will be a reduction of her benefits and she is responsible to report to SSA that her Golden State Pooled Trust account is paying the landlord directly.

Example Where Payment of Rent May Not be Not Advisable

Jane receives \$845 of SSI. She asks Bob, her Beneficiary Advocate, to have her Golden State Pooled Trust account pay her rent of \$250 a month. Jane's SSI will be reduced by \$ 244.66 – meaning that she is receiving no real benefit.

Example Where Payment of Rent Eliminates SSI

Jane receives \$800 of SSDI and \$65 of SSI. She asks Bob, her Beneficiary Advocate, to have her Golden State Pooled Trust account pay her rent of \$1,200 a month. Payment of her rent will cause complete loss of SSI but will not affect her SSDI. Bob and Jane might elect to have the rent paid by her account, but she will need to maintain her Medi-Cal eligibility without SSI. Note – in this example if Jane elects to lose her SSI and maintain her Medi-Cal independently she will need to apply to her local county Medi-Cal office.

Medi-Cal Eligibility Rules

The following section is only applicable if the beneficiary is receiving no SSI, because an SSI recipient that receives as little as \$1 in SSI benefits qualifies categorically for Medi-Cal. To qualify for Medi-Cal when not qualified for SSI, the beneficiary must:

- Be aged (65+) or meet Social Security's definition of disability
- Have less than \$2,000 in assets for an individual (\$3,000 for a couple).
- Meet a Resource test similar to SSI

Income as it Relates to Medi-Cal

The income limits vary according to family size and program category. Income is used to determine if a person/family is eligible for Aged & Disabled Federal Poverty Level Program Medi-Cal or Medi-Cal with a share of cost.

Aged & Disabled Federal Poverty Level Program – Income Rules

To qualify, the beneficiary must have less than \$1,133 in countable monthly income for an individual (\$1,525 for a couple) in 2009. If a beneficiary's monthly income is higher than \$1,133 the beneficiary may still be eligible for Medi-Cal with a share of cost (SOC).

Aged & Disabled Federal Poverty Level Program with a Share of Cost

A share of cost is similar to a monthly deductible. It is the amount of medical expenses that a Medi-Cal beneficiary must pay or be obligated to pay before Medi-Cal will cover any medical expenses. However, if Medi-Cal is not used in a given month, no share of cost will need to be paid in that month. Under the Medi-Cal with a Share of Cost (SOC) Program, the beneficiary must pay the SOC amount in any month medical costs are paid. After the SOC is paid, Medi-Cal will pay the remaining medical bills for that month.

The SOC is paid only for the months the beneficiary has medical expenses. The SOC is determined according to the beneficiary's monthly income minus subtracts \$600 for an individual or \$934 for a couple from the beneficiary's monthly income, and any other health-insurance premiums the beneficiary pays.

Share of Cost (SOC) Medi-Cal ISM Example

Barbara has a monthly income of \$1,150. Because her monthly countable income is greater than the Aged & Disabled Federal Poverty Level Program income limit of \$1,133, Barbara must pay at least \$550 in covered medical expenses and/or health care premiums in a given month before Medi-Cal covers any of her medical expenses for that month.

How Medi-Cal Counts the Payment of “In-kind Support and Maintenance” for Housing, Utilities, Food and Clothing Distributions

If a beneficiary is not receiving SSI and is eligible under a different program, countable income for Medi-Cal eligibility generally follows Social Security’s rules. There is a slight variation when a payment is made in kind for support and maintenance. California law states – “In-kind Support and Maintenance” is any support or maintenance received in kind from a person other than a responsible relative, or a Special Needs Trust for:

- Housing
- Utilities
- Food
- Clothing

California law goes on to say that “income in kind shall be considered income only if the entire item of need is provided.” If the Medi-Cal recipient does not make some contribution towards their housing, utilities, food or clothing, then the value of the assistance is determined in accordance with the following table. For instance, if a benefit recipient has their Golden State Pooled Trust Individual Account pay their utilities without the beneficiary making any contribution whatsoever and there are 2 members in their household, Medi-Cal will determine that they have \$38 of countable income for that month. If the beneficiary makes even a dollar contribution towards their utilities, then no assessment is made.

HOUSEHOLD MEMBERS	HOUSING	UTILITIES	FOOD	CLOTHING
1	\$153	\$33	\$86	\$27
2	\$206	\$38	\$182	\$49

Example - Golden State Pooled Trust Pays Entire Rent

Barbara wants her Golden State Pooled Trust account to pay her rent of \$1,000 a month. Barbara receives \$1,100 a month in SSDI. She also receives Medi-Cal under the Aged & Disabled Federal Poverty Level Program

If the Golden State Pooled Trust pays the full \$1,100, then her countable income will be \$1,100 plus \$153 (see Medi-Cal ISM Table for 2009) which makes her countable income \$1,253. Since \$1,253 is greater than the \$1,133 limit under the Aged & Disabled Federal Poverty Level Program she will have a share of cost of \$653 (\$1,253 - \$600). If she pays \$20 of the rent out of her own pocket, and her trust pays the remaining \$980, then the payment of rent does not affect her Medi-Cal eligibility.

Step 3 – Report to the Proper Agency

If the payment of housing is reportable, then the Benefits Recipient must report to the proper agency. If the beneficiary is receiving SSI, then a report must be made to the Social Security Administration. If the beneficiary does not receive SSI, then the report needs to be made to their County Medi-Cal Agency. See the Chapter on Reporting to the Proper Agency for More Information.

Paying for Personal Services

Setting the Value of Services

It is very common that a beneficiary will want to use their trust account to pay for services to assist them. One of the mandates of a Pooled Special Needs Trust under state and federal law is that all distributions must be for the sole benefit of the beneficiary, therefore care must be made to make sure that payments made for caregivers is appropriate. The trustee of the Golden State Pooled Trust may require advisement from an independent agency or care manager to make recommendations on the needs of the beneficiary, the level of care the care giver is providing, and the fair market value of the services the care giver is providing.

Agency vs. Non-Agency Caregivers.

Persons with disabilities frequently engage caregivers from outside the home to assist in their care and provide respite for the family from such responsibilities. Caregivers may be found through agencies, in which case payments to the agency cover the wages, taxes, insurance and benefits the agency provides to the attendant.

Utilizing a Non-Agency Caregiver - Independent Contractor” vs. “Employee.”

If you hire an individual who is not from an agency, there must be a determination about whether they are an *employee or an independent contractor* according to Internal Revenue Service Publication 926 “Household Employer’s Tax Guide”. The determination of whether a caregiver is an “independent contractor” (who will be responsible for paying his or her own taxes) or an “employee” (for whom the employer must withhold and pay unemployment and income taxes) will depend on several factors, including: right of control by the employer over details of the work; whether the employee is engaged in a distinct licensed occupation or

business; whether the employer supplies the tools and place of work for the caregiver; the length of time for which the person is employed; whether the employer can discharge the worker; the method of payment, whether by the time or by the job; and whether the work is part of the regular business of the employer.

Numerous cases have considered such factors and have found domestic caregivers to be employees rather than independent contractors. In such an event, tax and unemployment agencies will require the employer or employer's estate to pay the income and unemployment taxes that were not withheld along with penalties for non-payment. Therefore, the a Beneficiary Advocate that hires a non-agency caregiver shall (1) treat the caregiver as an employee and withhold the FICA and taxes required, and (2) take out worker's compensation insurance in case the worker is injured on the job. The Golden State Pooled Trust has made arrangements with Risk Management Strategies to assume the role of employer.

If your service provider is considered an independent contractor you will need to advise your tax preparer that you paid an independent contractor for personal services.

Household Employees

Household work is work done in or around your home. Some examples of workers who perform household work are:

- Caretakers
- Cleaning People
- Domestic Workers
- Drivers
- Health Aides
- Housekeepers/Maids
- Nannies
- Private Nurses
- Yard Workers

Example of Household Employee

1. You pay Betty to babysit your child and do light housework 4 days a week in your home
2. Betty follows your specific instructions about household and child care duties
3. You provide the household equipment and supplies that Betty needs to do her work
4. Betty is your household employee

Example Not a Household Employee

1. You made an agreement with John to care for your lawn
2. John runs a lawn care business and offers his services to the general public
3. John provides his own tools and supplies
4. John hires and pays helpers he needs
5. Neither John nor his employees are your household employees

TEAM, Trust Employee Administration & Management

The trustee of the Golden State Pooled Trust uses the services of, Trust Employee Administration & Management (TEAM) to facilitate the responsibilities of the Employer on behalf of the beneficiaries of the Golden State Pooled Trust. TEAM is a division of RISK MANAGEMENT STRATEGIES, INC.

TEAM actually assumes the role of employer of record of the caregiver. As the employer, TEAM will process all Federal and State payroll tax reporting and deposit requirements necessary as required by law. Additionally, TEAM will administer and coordinate payment of worker's compensation for each employee. Risk Management Strategies, is the employer of record and handles the day-to-day administration of employees and employee issues—including

everything from payroll to workers compensation to compliance issues. RMS is the W-2 employer and is responsible for the tax reporting liability, the claims management, and all the employer liability associated with employees providing services on behalf of the trust.

Before a service provider will be eligible to receive a paycheck, a New Hire Enrollment Packet must be completed by the service provider. Thereafter, the service provider will be required to submit a biweekly timesheet to TEAM.

Other Resources

<http://www.irs.gov/publications/p926/ar02.html>

Updated March 12, 2010

Using a Credit Card

Utilization of Credit Cards

One of the dilemmas that beneficiaries and the beneficiary advocate face is how to pay for the beneficiaries needs without giving them cash. Any cash given directly to a SSI recipient will reduce their SSI benefit dollar for dollar. Services and exempt resources given directly to a benefits recipient do not cause a reduction in benefits. Using a credit card to pay for items the beneficiary needs can be useful as a tool, but in some circumstances the utilization of a credit card can be harmful.

Keep in mind that the Golden State Pooled Trust must by law exercise discretion over distributions, therefore if a purchase is made prior to authorization, the Trustee may elect not to pay for a specific purchase. Having a distribution plan on file will allow preauthorization of purchases. When in doubt, contact the Golden State Pooled Trust before you make the purchase.

Example – Betty Needs a Dress

Betty is a beneficiary of the Golden State Pooled Trust and receives SSI, IHSS and Medi-Cal. She would like to purchase a dress at her favorite clothing store. If Betty purchases the dress and submits a distribution request for cash, the reimbursement would cause a dollar for dollar reduction in her benefits even though the purchase was for an exempt resource and therefore the distribution coordinator will deny the request. This would also include her using a card and having her trust account reimburse her debit card account because both SSI and Medi-Cal

Reimbursements Do Not Work Debit Cards Are Treated As Cash

- This would also include her using a debit card and having her trust account reimburse her debit card account.



consider payment to a debit account the same as receiving cash. Betty could have someone else purchase the dress and her account could reimburse the purchaser so long as Betty does not receive cash.

If Betty purchases the dress with her own credit card and has her trust account pay the credit card directly then she did not receive cash but instead receive an exempt resource.

What Does SSA Say? - POMS SI 01120.201 d. - Disbursements for Credit Card Bills

The Program Operations Manual (POMS) at [POMS SI 01120.201 d](#) gives guidance about how the Social Security Administration treats the payment of a beneficiary's credit card bill by a Special Needs Trust. The POMS states in part;

If a trust pays a credit card bill for the trust beneficiary, whether the individual receives income depends on what was on the bill. If the bill includes non-food, non-shelter items, the individual usually does not receive income as the result of the payment unless the item received would not be a totally or partially excluded non-liquid resource the following month.

If the trust pays for food or shelter items on the bill, the individual will generally be charged with in-kind support and maintenance up to the PMV. For example, if the credit card bill includes restaurant charges, payment of those charges results in ISM.

If the bill also includes purchase of clothing, payment for the clothing is not income.

Remember – the Golden State Pooled Trust may only make disbursements that are for the benefit of the beneficiary in accordance with Federal and State law.

Paying For Food or Shelter with a Credit Card for SSI Recipient

The Golden State Pooled Trust will not pay for food or shelter for SSI recipients unless the beneficiary or Beneficiary Advocate acknowledges that they have a duty to inform SSA that they have received food and shelter and that their SSI will likely be reduced dollar for dollar capped at the PMV which for 2010 is \$244.66.

Sole Benefit

A Special Needs Trust can only be used for the beneficiary's sole benefit, and cannot be used to make gifts or purchase meals for others. If for instance there are food purchases

that on the credit card bill that are for someone other than the beneficiary, the that expenditure cannot be authorized.

Remember – Sole Benefit Rule



- Remember – the Golden State Pooled Trust may only make disbursements that are for the sole benefit of the beneficiary in accordance with Federal and State law.
- Example – Betty would like to use her account to buy a gift for her son's birthday.

Methods of Identifying Purchases

In order for the distribution coordinator to authorize payment of a credit card bill, the distribution coordinator must be able to identify what the purchases were for. If the distribution coordinator cannot determine the nature of the purchase based upon the invoice or statement itself, the disbursement cannot be authorized. Backup documentation can be satisfied by;

- Receipts (preferred).
- Written declaration.
- Verbal declaration by the Beneficiary Advocate.

For more information on backup documentation go to the chapter entitled Disbursement Requests of this manual.

Payments in the Event That Proper Documentation is not Provided

In the event that some or all of the purchases submitted for payment cannot be readily determined by the distribution coordinator – it is likely that only those purchases that can be identified will be paid. Another option that the trustee may elect is to only pay the minimum payment due. It is strongly recommended that ALL expenditures be backed up by receipts.

Other Resources

Golden State Pooled Trust Video on Utilization of a Credit Card

www.specialneedstrust.tv/gcpt/video/credit_card/credit_card.html

This video reviews the policies and procedures of the Golden State Pooled Trust pertaining to utilization of a credit card to pay for the needs of a Golden State Pooled Trust beneficiary. Included is an example about how to review the credit card bill and fill out the distribution request.

Travel and Entertainment

Payment for Travel Expenses

A Golden State Pooled Trust Individual Account can pay for travel expenses for a beneficiary but certain rules must be strictly adhered to. The POMS states that :

“...travel tickets that cannot be converted to cash (i.e., it is not refundable) or used to obtain food or shelter is not considered as income ([SI 00815.001](#)), even if the ticket was used for transportation. Travel tickets that can be converted are income and are counted as unearned income at the current market value (CMV) in the month of receipt, whether or not the ticket was used for transportation.”

Attendants and Companions

Expenditures must be for the sole benefit of the beneficiary. Therefore paying for a companion is not allowed unless the companion is necessary as an attendant.

Example Where Paying For Companion Allowed

Shirley is a beneficiary of the Golden State Pooled Trust and wants to travel to Disneyland. Shirley regularly requires an attendant for her basic needs. She wishes to take a companion with her to assist her on the trip. This distribution can be authorized.

Example Where Paying For Companion Not Allowed

John is a beneficiary of the Golden State Pooled Trust but his disability does not require he have an attendant. John wishes to go to Disneyland and use his Individual Account to also pay for his wife and children to accompany him. The distribution coordinator can authorize assistance for John, but unfortunately the request to

pay for his wife and children cannot be authorized because it does not meet definition of sole benefit under SSI or Medi-Cal rules.

Purchase and Maintenance of Vehicles

Both SSI and Medi-Cal allow the benefits recipient to own one vehicle of any value and still maintain eligibility. For many years SSI recipients were limited to owning an automobile worth no more than \$4,500, but there were many exceptions to the rule that made the value limitation meaningless. In March 2005, the resource exclusion for automobiles was changed and under the current rules one automobile is completely excluded per household regardless of value.

What is considered a Vehicle?

An automobile is defined as any registered or unregistered vehicle used for transportation. The POMS goes on to say that “Vehicles used for transportation include but are not limited to cars, trucks, motorcycles, boats, snowmobiles, animal-drawn vehicles, and even animals. A temporarily broken down vehicle normally used for transportation meets the definition of an automobile.”

A vehicle that has been junked or vehicle that is used only as a recreational vehicle such as a boat used only for pleasure does not qualify as an exempt resource. The equity value of a vehicle that does not qualify as an exempt resource will be counted as part of the beneficiaries \$2,000 single/ \$3,000 couple resource exclusion.

How Automobiles must be Registered

Any vehicle purchased from a Golden State Pooled Trust account must be titled in the name of the beneficiary in accordance with SSA POMS SI 01120.201. Those POMS give the following example;

Example

Willie Jones is a young adult with mental retardation. Mr. Jones had a revocable trust established after 1/1/00. All but \$5,000 of funds in the trust had been spent on Mr. Jones' behalf. His mother files for SSI for him and is told that he is not eligible because of the money in the trust. His mother takes \$4,500 of the money and makes a down payment on a new car that she says she will use to transport Mr. Jones. However, she registers the car in her own name. Even though his mother will use the car to transport Mr. Jones, the purchase of the car is a transfer of resources since the car does not belong to him. (See [SI 01120.201F.1](#), for policy on purchases for the benefit of the individual and titling of property.)

Useful Links:

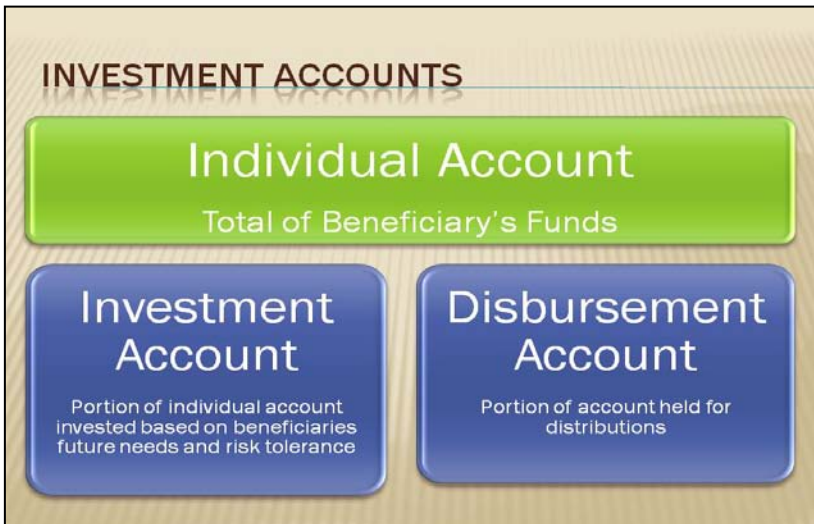
[SI 01130.200](#) Automobiles and Other Vehicles Used For Transportation

Investments of Individual Accounts

Although state and federal law allows the pooling of investments, the Golden State Pooled Trust in fact invests each Individual Account independently. It is the Trustee’s duty to select the right investments for each account based upon the needs of the beneficiary. It is the Trustees decision on how accounts are invested, but the beneficiary advocate’s input is given great consideration.

Investment Accounts and Disbursement Accounts

Each individual account is divided into an investment account and a disbursement account. The investment account holds the investment portion of the individual account, and the disbursement account is maintained to make the distributions. To know the total value of an individual account, both the investment account and the disbursement account must be added together.



Investment Models

Shortly after joining the Golden State Pooled Trust the beneficiary advocate will be contacted by a representative of Wells Fargo Bank to seek their input on the investment model that best fits the beneficiary's objectives. The trustee relies heavily upon the beneficiary advocate and the Wells Fargo Advisor to determine which model is appropriate for the beneficiary, but ultimately it is the trustee that makes the final decision. Each investment model is designed to strike a balance between the short term needs and long term needs of the beneficiary as well as the risk tolerance for the beneficiary.

In most cases, the initial funding of the individual account is held in cash for a period of time to determine what the distribution pattern is likely to be. After the pattern is established, the Wells Fargo Investment Advisor makes a recommendation to the trustee of which investment model best suits the beneficiary's needs. It is important to keep in mind that it is the trustee's decision about which investment model the individual account will be placed into, though deference is given to the beneficiary advocate in the selection process.

Investments Not Allowed:

Precious Metals
Real Estate
Options

Taxes

Taxation of Individual Accounts

The purpose of this section is to provide beneficiaries, the Beneficiary Advocate and their tax advisors guidance on the tax implications of the investment of the individual accounts, and guidance to tax preparers.

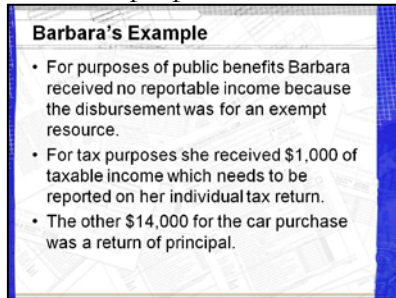
Distinguishing the Difference between Taxable Income and Benefits Income

One of the most confusing aspects special needs trusts and taxes is the difference between taxable income and benefits income. For income tax purposes – an individual account is a “grantor trust” to the beneficiary. What that means is that for income tax purposes any income from the trust must be reported on the beneficiaries’ tax return whether or not any distributions are made.

Each Golden State Pooled Trust beneficiary receives an IRS Form 1099 annually to report any income earned by that individual account on the beneficiary’s individual tax return (IRS Form 1040). Generally, an individual account will be treated as a “grantor trust” if the beneficiary himself (or herself), his (or her) guardian, or other authorized primary representative of the beneficiary, or any other person on behalf of the beneficiary deposits assets or properties belonging to that beneficiary to the individual account for that beneficiary.

Example

Barbara is a Golden State Pooled Trust beneficiary and receives SSI and Medi-Cal. She received a 1099 for her Golden State Pooled Trust Individual Account showing \$1,000 of taxable income for the year 2009. Her sole disbursement for the 2009 was \$15,000 to purchase an automobile. For purposes of public benefits Barbara received no reportable income because the disbursement was for an automobile - an excluded resource. For tax purposes she received \$1,000 of taxable income which needs to be reported on her individual tax return. The other \$14,000 for the car purchase was a return of principal. Her taxable income will not affect her SSI and Medi-Cal eligibility because Barbara did not receive cash directly but instead received an excluded resource.

A graphic box with a blue border and a light background. The title "Barbara's Example" is in bold. Below the title are three bullet points.

Barbara's Example

- For purposes of public benefits Barbara received no reportable income because the disbursement was for an exempt resource.
- For tax purposes she received \$1,000 of taxable income which needs to be reported on her individual tax return.
- The other \$14,000 for the car purchase was a return of principal.

Please note that in this situation the Social Security administration crosschecks with the IRS and eventually they may ask Barbara how it is that she received \$1000 of taxable income. This is why record-keeping is so important and it is advisable to report to the proper agencies in her individual account is first funded.

Preparation of Tax Returns and Elections

It is the responsibility of the beneficiary or the Beneficiary Advocate for the preparation and filing of any tax return for any beneficiary. The Golden State Pooled Trust does not give tax advice but following information is included to give guidance.

Taxation of Benefits

SSI benefits are completely non-taxable, and don't need to be reported on a tax return. [Publication v907](#), entitled Tax Highlights for Persons with Disabilities, the IRS explains, "Social security benefits do not include SSI payments, which are not taxable. Do not include these payments in your income."

On the other hand, Social Security benefits including Social Security Disability Insurance payments are sometimes partially taxable and other times completely exempt from being taxed. Social Security is required to send each benefit recipient a "Social Security Benefit Statement", or "Form SSA-1099" showing the amount of benefits received. The beneficiary can use this statement when they complete their federal income tax return to find out if they have to pay taxes on their benefits.

Provisional Income

Provisional income is the total worldwide income, including tax-exempt income, plus half of the beneficiary's Social Security benefits. If the beneficiary's provisional income is below the base amounts for filing status, then the Social Security benefits are completely non-taxable.

If a beneficiary files a federal tax return as an "individual," and their provisional income is between \$25,000 and \$34,000, the beneficiary may have to pay taxes on 50 percent of their Social Security benefits.

If the beneficiary's provisional income is more than \$34,000, up to 85 percent of the beneficiary's Social Security benefits are subject to income tax.

IF A BENEFICIARY FILES A FEDERAL TAX RETURN AS AN "INDIVIDUAL,"

- ✦ If provisional income is between \$25,000 and \$34,000, the beneficiary may have to pay taxes on 50 -percent of your Social Security benefits.
- ✦ If provisional income is more than \$34,000, up to 85 percent of the beneficiary's Social Security benefits are subject to income tax.
- ✦ Remember - SSI is not subject to taxation.

If a beneficiary files a joint return, they may have to pay taxes on 50 percent of their benefits if the beneficiary and the beneficiary's spouse have provisional income that is between \$32,000 and \$44,000. If the beneficiary's provisional income is more than \$44,000, up to 85 percent of the beneficiary's Social Security benefits is subject to income tax. Two very useful publications that explains the taxation of Social Security benefits are "Tax Information For Older Americans", and Publication 915, "Social Security Benefits And Equivalent Railroad Retirement Benefits". These publications can be obtained by calling the Internal Revenue Service's toll-free telephone number at 1-800-829-3676.

Social Security is Only Source of Income

"If the only income you received during the tax year was your social security or equivalent railroad retirement benefits, your benefits are probably not taxable and you probably will not have to file a tax return," according to the IRS, [Tax Topics 423](#).

Resources:

Free Tax Filing

The IRS has a program to allows a beneficiary to file a tax return over the internet at no cost. To find out more about this program, go to

<http://www.irs.gov/efile/article/0,,id=118986,00.html> or go to any of the links listed below.

[FreeTaxUSA.com:](#)

[CitizenTax:](#)

[TaxSimple Ultimate Version:](#)

[1040NOW.NET:](#)

[Free Tax Return:](#)

[ezTaxReturn.com:](#)

[Free1040TaxReturn.com:](#)

Updated March 12, 2010

Reporting to SSA

Reporting Guidelines

The SSI and Medi-Cal programs require periodic reports for all recipients. These reports **MUST** be completed for eligibility to continue. The Representative Payee or the Benefits Recipient must report the existence of the Special Needs Trust to SSA, and provide a copy of it if requested. In addition, the beneficiary must report all of the following:

A change in:

- (1) The beneficiary's address;
- (2) Employment status;
- (3) His or her living arrangements (such as adding or losing a roommate);
- (4) His or her income (including the receipt of any direct income or ISM from you as trustee);
- (5) Any countable resources;
- (6) Health insurance coverage;
- (7) The beneficiary's marital status;
- (8) Changes or improvements in the beneficiary's physical or medical condition (for example, the beneficiary improves so much that he or she is no longer considered disabled);
- (9) Admission to or discharge from any health facility or public facility (such as a hospital or nursing home);
- (10) Any trip outside the U.S.; and
- (11) New eligibility for other public benefits.

The report may be brief, but it should be in writing to the Social Security Administration and it should include the beneficiary's name and Social Security number, your name, a description of the event that triggered the report and the date of the event. The report is due within 10 days after the end of the month in which the event took place. Be sure to keep a copy of all reports you send to the SSA.

Failure to Report

If a SSI recipient fails to make a required report on time, the SSI program is entitled to reimbursement for all SSI benefits incorrectly paid to the beneficiary, and SSI can assess a penalty of up to \$100, depending on the lateness of the report. When in doubt it is safer to report and explain a distribution to the beneficiary than for it to be discovered later.

Procedures upon the Death of a Beneficiary

Upon the death of a beneficiary of the Golden State Pooled Trust, the Trustee shall comply with all state and federal law pertaining to disposition of the remaining assets in the Individual Account. See 42 USC 1396p d (4) (C), Title 22 of the California Code of Regulations, Section 50489.9 (a) (4). and the Medi-Cal Eligibility Procedures Manual Letter Number 192.

Those laws require that all funds remaining in the individual account upon the death of a beneficiary, up to an amount equal to the total amount of medical assistance paid on behalf of beneficiary by the Medi-Cal program during the beneficiary's lifetime, shall be paid to reimburse the California Department of Health Services, or the equivalent agency of any other state. The State shall receive this amount only to the extent that funds remain in that beneficiary's individual account and are not retained by the trust to cover taxes, management and investment fees associated with that account.

Administrative expenses that may be paid

The following expenses are authorized under state and federal law:

- Taxes due from the beneficiary's Individual Account to the State or Federal government because of the death of the beneficiary;
- Reasonable fees for administration of the beneficiary's estate
- Completion and filing of documents, or other required actions associated with termination and winding up of the beneficiary's Individual Account and attorney fees therefore.
- Outstanding bills for the benefit of the disabled individual or disabled spouse that fall within the terms of the trust,
- Reasonable Burial or funeral expenses of the disabled individual or disabled spouse.

Administrative Expenses that May Not be Paid

Distributions that may not be paid prior to the satisfaction of the State's Medi-Cal reimbursement right are payment of debts owed to third parties that do not fall within the terms of the trust, and payments to the final remainder beneficiaries.

Distribution of Remaining Assets

The Trustee shall make distributions in accordance with the terms of the Joinder Agreement after the allowable administrative expenses are paid and the State's right to reimbursement is satisfied. The Golden State Pooled Trust does not require that any amount be retained by the trust upon their death. A beneficiary may change who they wish to designate as the remainder beneficiary at any time so long as they have the capacity to make the designation or the Individual Account is not restricted by court order or other agreement. If the Trustee suspects that the beneficiary lacks capacity to change a remainder beneficiary or is subject to undo influence the Trustee may require the beneficiary to seek counsel to make that determination.

Updated March 12, 2010

Fees

TRUST FEES

Enrollment: \$1,500 (one-time fee)

Annual Administration Fees:

\$0-599,999: \$1,500 or 1.5% whichever is greater.

\$600,000-999,999: 1.25%

\$1,000,000 and higher: negotiable

Updated March 12, 2010