

## An Issue We Hope You Will Never Have to Deal With

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### RELATED ATTORNEYS

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For people who have disabled dependents, there is a device called a special needs trust. A special needs trust is intended to allow a disabled individual to maintain eligibility for certain needs-based government benefits such as Medicaid, supplemental security income and others. Assets in a special needs trust are not considered “available assets” for those purposes.

### RELATED PRACTICE AREAS

Trusts & Estates

In order to achieve the purpose of a special needs trust, the trust must be properly created and administered. The requirements for creation and administration of special needs trusts are precise and complex. This is not intended as a tutorial on how to do it.

Two recent decisions addressed certain very specific issues related to special needs trusts. Special needs trusts implicate both state and federal law. One obligation of a trustee is to take care that certain state-permitted acquisitions by the trust do not disqualify the beneficiary from federal benefits.

In *The Matter Of A.N., a Minor*, 430 NJ Super 235 (App. Div. 2013) examined that question. A trustee sought to purchase a home for the benefit of the disabled beneficiary, permitted by the State. The trustee sought approval of the transaction from the Chancery Division and also sought an instruction regarding the impact of the transaction on Medicaid eligibility. Such an application must be served on the Division of Medical Assistance and Health Services (DMAHS), the agency that makes Medicaid eligibility determinations. After review, the court decided that the Chancery Division could review and approve the transaction but could not issue any direction on future Medicaid eligibility. Only DMAHS could do that after an application for Medicaid had been filed.

The other recent case, *J.B. v. W.B.*, 215 NJ 305 (2013), examined the use of special needs trusts as part of a divorce and resulting support obligations. That case was complicated because it involved

modification of an existing property settlement agreement, but putting that aside the court noted

“A special needs trust in conjunction with a thoughtful plan to gain eligibility and receipt of government benefits, including Medicaid, SSI, and Division of Developmental Disability (DDD) programs, permits a family to provide health care, income, housing, and vocational services for their disabled, dependent child. The redirection of a child support obligation from a parent to a trust designed to meet the present and future needs of the dependent, disabled child should not be considered exceptional or extraordinary relief, if such a plan is in the best interests of the unemancipated child.”

As noted earlier, this is not intended to give guidance on how to prepare or administer a special needs trust, or even if such a trust is appropriate for your circumstances. It is intended only to point out two recent cases of interest. Should you have to deal with these unfortunate issues, we are ready to help.