



Special Needs Life Planning

Making a Good Life Possible

Blaine P. Brockman, Esq.



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A Special Needs Life

Birth and Early Childhood

- ✓ Due to birth complications, Bart has developmental disability
 - Facts of Life: A Whole New World
 - Quality of Life: Medical Care
 - Legal Implications: Early childhood support



A Special Needs Life

Adolescence and School Age

- ✓ Bart is in school growing into his teens
 - Facts of Life: Difference more apparent
 - Quality of Life: About school support
 - Legal Implications: IEPs and Waivers



A Special Needs Life Adulthood

- ✓ Bart is now an adult and out of school
 - Facts of Life: Another New World
 - Quality of Life: Medicaid Waivers and SSI
 - Legal Implications: Managing estate and income



Overview of Public Benefits

Good Life Require Support

Two big categories

✓ Means Tested

- Medicaid
- DD Waivers
- SSI
- SNAP
- Section 8

✓ NOT Means Tested

- Medicare
- SSDI
- DAC
- Some DD services

Medicaid v. Medicare

Paying for Health Care and Support

✓ Medicaid

- MULTIPLE types
- Community/MAGI
- ABD (LTSS)
 - Waivers
- Income counts
- Resources count

✓ Medicare

- Basic health insurance
- Age 65+
- No income/resource test

“Community” Medicaid Basic Health Insurance

- ✓ Basic health insurance provided to the very low income
 - No disability requirement
 - Provided to those on ABD Medicaid too
 - The Affordable Care Act
 - No resource test
 - Expanded Medicaid to childless adults
 - Increased FPL limits in other categories
- ✓ Income test
 - Children with no insurance: 206% FPL
 - Adults: 138% FPL

ABD Medicaid

Basic Health Insurance PLUS

- ✓ Community Medicaid + Long Term Support Services
 - Skilled therapies and skilled nursing
 - Case management
 - Nursing home care

- ✓ Aged, Blind, or Disabled
 - Aged = 65+
 - Disabled or Blind
 - NEW: Substantial Gainful Activity

ABD Medicaid Income Limits

- ✓ As of August 1, 2016
 - Income limit \$2,199.00
 - Excess income must be placed in a Qualified Income Trust (QIT, aka Miller Trust)
- ✓ From QIT one spends down on
 - Person needs allowance
 - Spousal needs allowance
 - Patient liability and medical expenses
 - Administrative costs

ABD Medicaid Resource Limits

- ✓ Resources: \$2000.00 limit
 - Income in month of receipt, but resource on the first of the next month
 - Exceptions: home, car, funeral plan, etc.
- ✓ Improper transfers
 - 5 year look back period
 - No gifting
 - Transfers things that are not resources

ABD Medicaid Waivers

- ✓ Different waiver programs for community care
- ✓ A number of different waivers:
 - Level One waiver
 - IO waiver
 - SELF waiver
 - Homecare waiver
 - PASSPORT waiver
- ✓ Medicaid Buy-In

Medicare

Public Benefits: Health Care

- ✓ No Means Testing - Bill Gates will get Medicare!
- ✓ Health insurance program, not welfare
 - Age 65+ PLUS some disabled workers
 - Dual eligibility

Social Security Programs

SSI v. SSDI

- ✓ SSI (Supplemental Security Income)
 - Need based
 - \$735/mo income (2017)
 - \$2000 resources
 - Deemed income problem for minors
 - Must be disabled & unable to perform SGA
 - Medicaid eligible

Social Security Programs

SSI v. SSDI

- ✓ SSDI Social Security Disability Insurance
 - Not needs based
 - Workers pay taxes to become eligible
 - Must be disabled & unable to perform SGA
 - Eligible based on work history
 - 2 years = Medicare

Social Security Programs

Disabled Adult Child Benefits

- ✓ Officially: Child Disability Benefits
- ✓ Eligibility
 - The child is (or was) dependent upon the parent (i.e. insured worker)
 - The child is not married
 - The child is at least 18 years old and with a disability which began before age 22
 - The parent meets any of the following conditions:
 - Is entitled to disability insurance benefits;
 - Is entitled to retirement insurance benefits;
 - Died and was fully or currently insured at time of death.
- ✓ Child's award does not reduce what the parent gets

Other Important Programs

Housing and Food

- ✓ Section 8 Housing
 - The “rent burden” is 30% of income
 - The PHA will pay the landlord the rest

- ✓ SNAP – Supplemental Nutrition Assistance Program (“Food stamps”)
 - SSI individuals are “categorically” eligible for SNAP

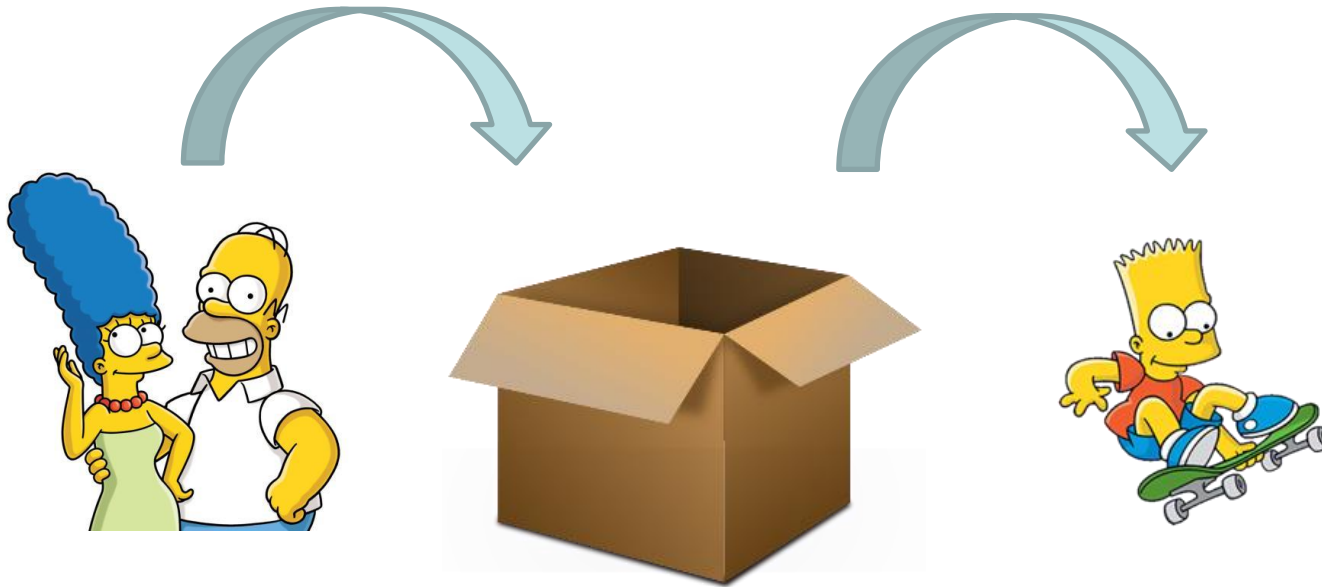
Guardianship

Is it Necessary?

- ✓ Two types of guardianships in Ohio
 - Estate (financial)
 - Person
- ✓ Factors to balance in determining the need for a guardianship
 - Person's level of competence and ability to self advocate
 - Complexity of person's estate
 - Need for guardian to make personal decisions, especially about healthcare
 - Availability of lessor alternatives

Trust 101

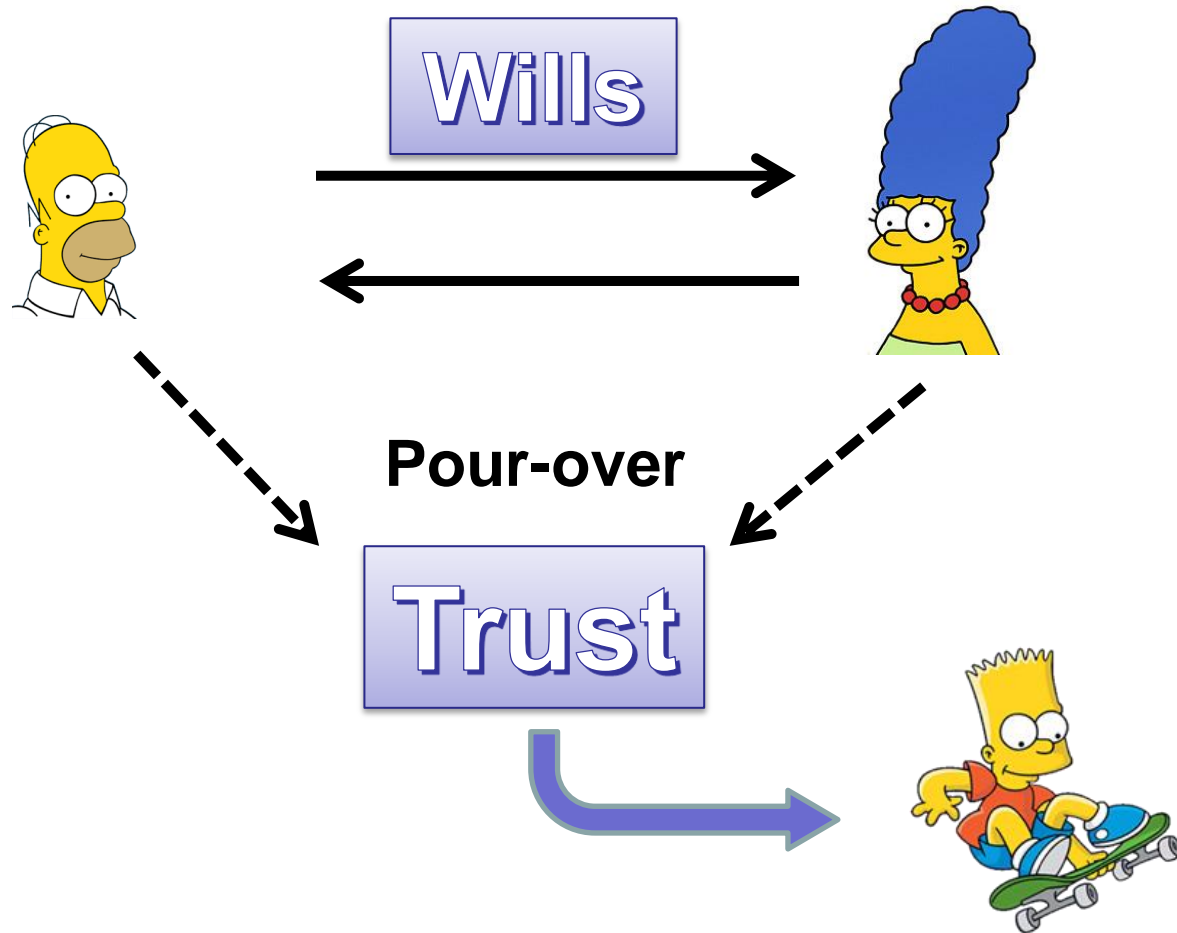
A Trust is Like a Box



There are 3 players



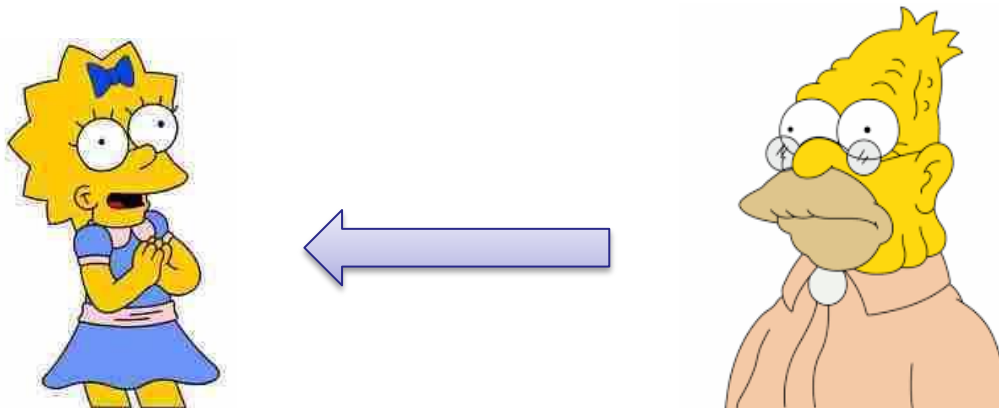
The Typical Special Needs Estate Plan



Inheritance from Grandpa

What not to Do

- ✓ Grandpa wants to leave inheritance to take care of Bart
- ✓ Doesn't want to leave the money directly to him or it could disqualify him for benefits
- ✓ He leaves everything to Maggie to use to care of Bart
- ✓ **Why is that a bad idea?**



Special Needs Estate Plan Discretionary Trusts

- ✓ Wholly discretionary trusts
 - ✓ “Third Party” Trusts
 - Can be set up before death and used during life
 - A will can pour into it
- ✓ Testamentary trusts
 - Cannot be used during life
 - Will sets it up and pours into it
- ✓ The key is that the beneficiary has no control over the trust
- ✓ No “Medicaid payback”

Lump Sum Income Special Needs Trusts



- ✓ What is a lump sum?
 - Inheritances, lawsuits, etc.
 - Bart is entitled to receive
 - It's Bart's money!

- ✓ If Bart refuses the money, he loses benefits
- ✓ If Bart keeps the money, he loses benefits
- ✓ If Bart gives away the money, he loses benefits

Special Needs Trusts For “First Party” Money

- ✓ Also known as..
 - d4(A) or d4(C)Trusts
 - Sole Benefit Trusts
 - Medicaid Payback Trusts
 - First Party Trusts

- ✓ Two types
 - Stand alone
 - Pooled

Special Needs Trusts

Stand Alone

- ✓ 42 USC 1396p(d)(4)(A)
- ✓ Managed by individual trustee
- ✓ Medicaid payback
- ✓ Sole benefit of the beneficiary under age 65
- ✓ Established by:
 - Parent
 - Grandparent
 - Guardian
 - Court

Special Needs Trusts

Pooled Trust

- ✓ 42 USC 1396p(d)(4)(C)
- ✓ Managed by a non-profit corporate trustee
- ✓ Medicaid payback of revert to non-profit
- ✓ Sole benefit of the beneficiary
- ✓ Established by:
 - Parent
 - Grandparent
 - Guardian
 - Court
 - *Beneficiary*

ABLE Act and STABLE Accounts

ABLE Act

Ohio STABLE Accounts

- ✓ Ohio passed ABLE legislation in October 2015
 - ORC §§113.50 -.56
- ✓ TOS selected a Program Administrator
- ✓ Fifth Third Bank is the custodian
 - Five investment options
 - Debit card option
- ✓ Started in June 2016
- ✓ See <http://stableaccount.com>
 - This is the Ohio portal for creating accounts

Eligibility

- ✓ Blind or disabled before reaching age 26
 - Receiving Social Security benefits based on a disability
 - *Otherwise meeting the Social Security disability test*
- ✓ A person can have only ONE ABLE account
- ✓ The Beneficiary does not have to reside in the state where the ABLE account is opened

Eligibility

Otherwise Meeting SSA Disability Test

- ✓ Unable to engage in “Substantial Gainful Activity” (SGA) due to a physical or mental impairment lasting more than 12 months or expected to result in death.
 - Person opening the account must swear under penalty of perjury that the beneficiary meets the eligibility requirements
 - Signed physician's statement confirming the diagnosis must be held by the Beneficiary and available if requested by Plan Administrator and/or IRS
- ✓ SSA Five-Step process for determining whether one is disabled.
 - For a deceptively simplified walk through, see <https://www.ssa.gov/policy/docs/rsnotes/rsn2013-01.html>

Establishing the Account

- ✓ STABLE Accounts can be opened by
 - The Beneficiary (owner) of the account
 - Or the Beneficiary's
 - Parent
 - Guardian
 - POA



Contributions

Who?

- ✓ Any “Person” can contribute to an ABLE account
 - “Person” means individual, trust, estate, partnership, association, company, or corporation.
- ✓ Change in beneficiary allowed for siblings
- ✓ Rollovers from other ABLE Accounts
 - Only between family members

Contributions

How Much?

- ✓ Annual contribution limits
 - From all sources
 - 2017 = \$14,000
- ✓ Total Balance
 - The state's limit for 529 accounts
 - Ohio 2017 = \$ \$445,000

Impact on SSI and Medicaid

- ✓ SSI eligibility suspended if account exceeds \$100,000
- ✓ Medicaid (and other programs like SNAP) eligibility continues if account exceeds \$100,000

Medicaid Payback

- ✓ The account Beneficiary (or the estate) must pay back Medicaid in an amount equal to the Medicaid benefits provided to the Beneficiary.
 - But, only for the amount following establishment of the ABLE account.
 - For 1st party SNTs, it's the total assistance provided.

Qualified Disability Expenses

- ✓ As defined in the law
- ✓ Expenses are expenses that...
 - relate to the Beneficiary's disability and...
 - are for the benefit of that Beneficiary...
 - in maintaining or improving his or her health, independence, or quality of life.

Qualified Disability Expenses

- ✓ The list you have probably seen.
 - Education
 - *Housing*
 - Transportation
 - Employment training and support
 - Assistive technology and related services
 - Health and wellness
 - Financial management and administrative services
 - Legal fees
 - Expenses for ABLE account oversight and monitoring
 - Funeral and burial; and
 - Basic living expenses

ABLE Act Takeaways

✓ Cautions

- Reduced competence Beneficiary
- Undue influence and exploitation
- Record keeping requirements
- Disability certification and the nuance of SGA

✓ ABLE is only a tool in the toolbox.

- It does not diminish the importance of correct special needs planning

ABLE Act

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**Hickman
& Lowder**
Co. L.P.A.
Attorneys at Law

QUESTIONS?

Blaine P. Brockman, Esq.



**Hickman
& Lowder**
Co. L.P.A.
Attorneys at Law

Turning Your Obstacles Into Opportunities

Hickman-Lowder.com

216-861-0360
Cleveland

440-323-1111
Sheffield Village

614-879-4143
Dublin



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