

## **Beware of UTMA Accounts for Disabled Children or Grandchildren**

Paul's son Mark has cerebral palsy. When Mark turned 18 he was approved for Supplemental Security Income (SSI) payments and Medicaid, with Paul as the representative payee for his son's benefits. When Paul applied for Mark's SSI he disclosed to the Social Security Administration that Mark had a Uniform Transfers to Minors Act account (UTMA) with a \$30,000 balance. Social Security assured Paul that the UTMA account would not affect Mark's eligibility for benefits.

Mark is now 25 years old. Last week Paul got a notice from the Social Security Administration that Mark's SSI is being cut off because of his UTMA account and that Mark would have to repay two years of benefits totaling over \$14,000. Paul was stunned. He had disclosed the UTMA account when Mark first applied for SSI and he had been diligent about complying with all of SSI's rules.

**What is a UTMA account?** UTMA accounts are controlled by state law (and used to go by an earlier name: Uniform Gifts to Minors Act (UGMA) accounts). Both types of accounts are designed to hold money that is given to a minor child. In Mark's case the UTMA account was opened up when he was a baby to hold periodic cash gifts made by his grandparents. Though parents and grandparents knew at the time that Mark would have a disability throughout his life, they were hopeful that the money would help make him more independent and comfortable, and that his functional abilities might improve as he grew up.

A UTMA account is legally owned by the child and even lists the child's Social Security number. The funds are controlled by a "custodian," but the custodian is required to hold and use the money for the benefit of the child. The account resembles a simplified trust arrangement, with its terms set by state statutes. State law determines when the UTMA account will terminate. Depending on the state and the circumstances, the account terminates when the child reaches the age specified in the state law, which is 21 in Mississippi. When the child reaches age 21, the balance in the UTMA account is then legally available to the (now adult) child.

**How does SSI treat UTMA accounts?** Social Security's policy manual provides that Social Security will not count a UTMA account as an available resource for SSI purposes until the account is considered available under state law. Interest or dividend income generated from a UTMA account is also not counted as income of the SSI recipient. Of course, if the custodian makes a distribution of cash to the child from the account the payment would be counted as income to the child for that month. SSI does count the UTMA account as an available asset in the month in which the child reaches age 21 (or age 18 in some states), at which time state law requires that the account be terminated.

Unfortunately the Social Security Administration or state Medicaid agency does not remind parents of a child approaching majority that a UTMA account may soon be counted as an available asset. In Mark's case his UTMA account of \$30,000 made him ineligible for SSI and Medicaid as of his twenty-first birthday, when the law in his state mandated that the account became available. Because the Social Security Administration determined that Paul

as the representative payee was not “at fault” in creating the overpayment, the recovery was limited to two years instead of four. It took Social Security four years to make the connection, but once the determination was made the ineligibility was retroactive to Mark’s twenty-first birthday.

**Missed opportunity:** Before Mark turned 21 the UTMA account could have been transferred into a “**special needs trust**” for Mark’s benefit. This trust would most likely require a “Medicaid payback” at Mark’s death since the trust would be funded with Mark’s own money—even though the funds originally came from Mark’s grandparents. In some circumstances (and states), it may even be possible to avoid the necessity of establishing a payback trust at all, but the key is to decide how to proceed before the child reaches the age set by state law.

In Mark’s case, after Paul repays the Social Security Administration for the overpayment he can still transfer the remaining funds into a “special needs trust” so that Mark can re-qualify for SSI as of the first of the next month. Paul can also make purchases for Mark’s benefit (like adaptive equipment, or the dental work that Mark needs) that could eliminate the need for a trust at all. Unfortunately, in Mark’s case it is too late to save the \$14,000 that the Social Security Administration will claim for its overpayment.

**Lesson learned:** Parents and grandparents should consider making gifts of money or other assets for a child with a disability into non-Medicaid payback special needs trusts *instead* of into UTMA accounts to avoid the problem above. Parents, financial advisors and legal counsel should do a check of any UTMA accounts for a child approaching the age of majority in cases of disability. It is easy to avoid a serious eligibility issue with important government benefits by transferring the UTMA account into a special needs trust **before** the account is available to the child. As always, competent legal advice from a special needs planning attorney can help navigate the tricky (and not always obvious) eligibility rules and procedures.

For help with special needs financial and healthcare planning for a child or grandchild with a disability, contact us at 601-987-3000 or toll-free 866-353-3752, or visit the website of the Special Needs Alliance, LLC at [www.specialneedsalliance.com](http://www.specialneedsalliance.com).