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## **Divorce and the Child With Special Needs: Income Deeming and Child Custody**

Divorce is a difficult process for everyone. If you have a child with special needs, the choices you make during a divorce can have lifelong repercussions, both for you and for the child. It is not always in the best interest of a child with a disability to receive a large award because child support could cancel the child's SSI and Medicaid benefits.

But this is not the only problem child support creates for a child with special needs; a complicated process that the Social Security Administration (SSA) uses to evaluate household income can also wreak havoc with SSI and Medicaid benefits.

When a disabled child lives in a household with other people, the SSA takes into account the income of everyone who lives with the disabled child when it calculates eligibility for benefits. This is known as "income deeming." The SSA applies a formula to determine what portion of the household income applies towards eligibility. If the total household income is too high, the disabled child can lose SSI and Medicaid.

In families going through a divorce, income deeming becomes especially important for two reasons. First, a child with special needs may have siblings who are also receiving child support from an absent parent. In these cases, that additional child support will count as household income and could place the SSI recipient's benefits in jeopardy. Second, the choice of parent who will have custody of the child (the custodial parent) could throw off an SSI benefit if one parent's household income is significantly different from the other's. In many cases, loss of SSI benefits is not a key factor in choosing a custodial parent. But in other cases, especially when the child receives significant benefits from SSI and Medicaid, the choice of a custodial parent could make a tremendous difference for that child's welfare.

Richard Courtney is the father of an adult daughter with disabilities and a charter member of the Special Needs Alliance ([www.specialneedsalliance.org](http://www.specialneedsalliance.org)), an invitation-only nationwide association of special needs planning attorneys. If you or any of your loved ones are going through a divorce, he can help you understand these complex income deeming regulations and will work with your divorce attorney to make sure that child support will not adversely affect your child's future. **For help with this and any other issues pertaining to the care of a child or adult family member with disabilities, contact Richard Courtney at 866-ELDERLAW (353-3752) today.**

