



Social Security Appeals - A Tale of the Two OBRA '93

Have you received a negative decision by the Social Security Administration for benefits involving an OBRA '93 Trust? You should be aware that you have the right to appeal a decision by the Social Security Administration that you do not agree with.

For many of our clients, Supplemental Security Income (SSI) is the only financial income source their adult disabled child receives. It is an important benefit, not only because it provides a steady monthly income stream, but because it acts as fast pass to other benefits. For instance, individuals receiving SSI are categorically eligible to receive Medicaid, MassHealth in Massachusetts. MassHealth/Medicaid is an important benefit because it pays for more than customary health coverage, like supervision, care attendants, day habilitation, job training and others services.

For an adult to receive SSI, he or she must meet both functional and financial eligibility criteria. In general, he or she must have a disabling condition that prevents him or her from engaging in substantial gainful activity, have limited income and have less than \$2,000 of countable resources. Once eligible, he or she must continue to meet the eligibility criteria or benefits will stop.

If benefits are denied, there is a right to appeal. Generally, you have 60 days to appeal a decision. However, if SSI monthly payments have already begun, the appeal should be filed within 10 days so benefit payments will continue during the appeal process.

A typical appeal starts with a request that the Social Security Administration (SSA) reconsider the matter. The reconsideration can be internal or involve a meeting. If the decision is not changed and you are still dissatisfied, there is a further appeal to an Administrative Law Judge to hear the case.

The Special Needs Practice Group recently had two major victories with SSA. Both cases involved SSA's objections to certain provisions contained within our OBRA '93 trusts.

An OBRA '93 Trust is designed to manage and distribute assets for the benefit of an individual with a disability without disrupting their financial eligibility for SSI. Funds held in a properly drafted OBRA '93 Trust should not be a countable resource owned by the SSI applicant/recipient by SSA when it is making its determination of financial eligibility.

CASE # 1

Medicaid Payback Provisions Upheld. Client's son with a disability turned 18 and applied for SSI. His parents were aware of a substantial monetary gift that his grandparents had made directly to him. So, they created an OBRA 93 Trust and funded the OBRA 93 Trust with the gifted funds. This is an acceptable use of an OBRA '93 Trust as authorized under federal law.

SSA denied SSI because it took issue with provisions contained in the OBRA '93 trust related to the so-called payback obligation of OBRA '93 Trusts. Under federal law, any remaining assets held by the OBRA '93 Trust upon the death of the beneficiary are available to pay – back any properly paid Medicaid benefits paid for the beneficiary during his or her lifetime. While this provision is mandated by federal law, its administration is interpreted under both federal and state law.

At the reconsideration conference, we explained the complex nature of the law to the SSA representative without success. The SSA representative was not an attorney and did not receive sufficient training on OBRA '93 trusts. Therefore, the representative was not comfortable allowing the trust. The client continued to appeal the decision and it took approximately 8 months to receive a hearing before an Administrative Law Judge. The judge was knowledgeable on both federal and state rules and fully agreed with our interpretation of the law. SSA was reversed and our client received approximately a year and a half of SSI benefits. It is important to remember that when a claimant prevails at a hearing the favorable decision relates back to the date of the original application.

CASE # 2

SSA Changes its Mind, Declares Trust Invalid, Discontinues SSI and Orders Repayment. Judge Upholds OBRA '93 Trust. Parents initiated an SSI application in 2004 on behalf of their son with a disability. At the time of the application, they submitted an OBRA '93 Trust for review by SSA. SSA approved the trust and the application. SSI payments commenced. However, in 2007, SSA reviewed the OBRA Trust again and this time it took the position that it was not valid. SSA terminated SSI payments, told the client it initially made a mistake and demanded repayment of close to \$13,000. The parents were so concerned that they paid the amount by exhausting trust resources and using some of their own personal funds.

Believing the trust to be appropriate, we took the position with SSA that it should not have terminated benefits or required a payback of past benefits. Similar to the first case, we did not have much success in working the matter out with the claims representative but won the appeal before the Administrative Law Judge. The Judge agreed with our position of the case, our client's benefits continued and the parents were awarded a reimbursement of the funds they paid to SSA.

These cases are illustrative of the importance of appealing SSA decisions on a timely basis.

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