

The ABLE Case Summary Series

The Impact of an ABLE Account on Social Security and SSI Disability Benefits

This is the first in a six-part Case Summary Series to explore ways to benefit from an ABLE account that complement continued eligibility for selected public benefits and programs and/or use of special needs trusts. The purpose of the series is to help current or future ABLE account owners and beneficiaries understand better the possibilities of an ABLE account complementing other strategies to improve health, independence and quality of life.

Introduction

The Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act is found in section 529A of the Internal Revenue Code and became a law in December 2014.¹ Proposed Department of the Treasury ABLE regulations were published on June 22, 2015 and have not been issued as final.² As this is written, more than 30 states have established ABLE programs, allowing eligible individuals with disabilities to open ABLE accounts. The ABLE account offers individuals with a disability which began before age 26, an opportunity to save funds, in a dedicated account, to meet “qualified disability expenses” that will allow them to improve health, independence and quality of life.

A significant percent of ABLE account beneficiaries can be expected to receive cash payments through either the Social Security or Supplemental Security Income (SSI) disability program. Additionally, a significant number of ABLE account beneficiaries will be children, under age 18, who are not currently eligible for SSI due to parental income but are expected to be eligible for SSI at age 18. This article will explain the basics of the Social Security and SSI disability programs; explain how the SSI income and resource rules operate; and explain how contributions to an ABLE account, assets held in the account, and account distributions affect eligibility and

¹ 26 USC 529A.

²80 Federal Register 35602-01.

payment amounts for the Social Security and SSI disability programs. We will then use a case scenario to show how the ABLE account and SSI work together.

Social Security and SSI Disability: Issues Faced with an ABLE Account

Each of these programs provides cash payments to individuals with disabilities. For adults, age 18 or older, the disability criteria are the same in each program. However, there are special SSI rules for evaluating “statutory blindness.” With the exception of SSI and individuals who are blind, an adult applicant must show, through medical evidence, that he or she is unable to perform substantial gainful activity.³ The SSI program has a separate disability standard for children under 18. The child applicant must show, through a combination of medical evidence and educational records, several substantial deficits in the ability to function in both school and non-school settings compared to his or her non-disabled peers.⁴ Social Security and SSI disability beneficiaries, and their parents, have expressed concerns about whether the use of an ABLE account could have adverse consequences for their future eligibility for Social Security or SSI. We note that many individuals will receive a combination of Social Security and SSI benefits.

Social Security Disability Payments: Not Impacted by an ABLE Account

This program, often referred to as Social Security Disability Insurance (SSDI), is available to individuals who have worked and put money into the Social Security trust fund through payroll deductions. SSDI can, in some cases, also be available to the wage earner’s spouse, divorced spouse, or widow(er); and to the wage earner’s adult disabled child. The complicated criteria for determining whether the wage earner has achieved “insured status,” based on the amount of contributions into the Social Security trust fund, is beyond the scope of this article.

An SSDI applicant establishes the right to a Social Security payment based only on the wage earner’s insured status and on meeting the SSDI disability criteria. Since SSDI is not a means-tested benefit, there is no limit to the amount of resources a beneficiary can have and other income generally will

³ See 20 CFR 404.1505 (Social Security); 20 CFR 416.905 (SSI).

⁴ 20 CFR 416.906.

not affect eligibility or payment amount.⁵ Therefore, the money contributed to the ABLE account, the money or assets held in the account, and the distributions made from the account will never have an impact on SSDI eligibility or payment amount.

SSI Disability Payments: New Policies Greatly Limit Impact of ABLE Account

SSI is based on financial need. In 2018, the maximum SSI federal benefit rate is \$750 per month, with states supplementing that amount at their option. Unless one or more income exclusions apply, any income received by the SSI beneficiary will affect the monthly SSI payment amount. In some cases the beneficiary's monthly income can result in no monthly SSI payment. The maximum amount of countable resources allowed is \$2,000. If resources go above that amount the right to an SSI payment will be suspended, for up to 12 consecutive months, until countable resources are again within the \$2,000 limit. If resources remain above \$2,000 for 12 consecutive months, the SSI is terminated and a new application would be required to reestablish SSI eligibility.

In March 2016, the SSI program issued its updated Program Operations Manual Systems (POMS) policies governing ABLE accounts.⁶ Several key SSI policies appear in the March 2016 POMS related to ABLE accounts:

- Contributions of the designated beneficiary to the ABLE account, from his or her monthly income (i.e., income other than SSI), will still count as income for SSI (subject to any income exclusions) and may result in a reduction to the SSI payment. Contributions from all others are excluded and not counted as income of the beneficiary.
- Earnings from the ABLE account are excluded and not counted as income or against SSI resource limits.
- Up to \$100,000 of the account balance is excluded by SSI and not counted toward the \$2,000 SSI resource limit.
- When the value of an ABLE account exceeds \$100,000 and the amount above \$100,000, combined with other resources, results in countable resources above \$2,000, SSI payments are indefinitely suspended.
 - Example: Mario has \$101,500 in his ABLE account and \$1,500 in his checking account. Since his countable resources are now \$3,000 (\$1,500 from ABLE account + \$1,500 from checking

⁵ The SSDI payment level could be reduced if the person is also receiving a worker's compensation payment. See *How Workers' Compensation and Other Disability Payments May Affect Your Benefits* (Social Security Administration, Publication No. 05-10018), www.ssa.gov/pubs/EN-05-10018.pdf.

⁶ POMS SI 001130.740, <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740>.

account), and his ABLE account has caused him to exceed the resource limit, his SSI payments are indefinitely suspended.

- Unlike the general SSI rules related to excess resources, SSI eligibility is not terminated after 12 months of excess resources related to the ABLE account. SSI payments will be restored once the overall countable resources are reduced to \$2,000 or less. Under SSI's ABLE policy, two years or several years could elapse and the beneficiary can return to SSI payment status when countable resources are again below \$2,000.
 - Example: Mario continues putting money in his ABLE account for 24 more months and his indefinite suspension continues. Then, with the account balance standing at \$107,000, he takes a \$21,000 distribution to purchase a new car (a Qualified Disability Expense), dropping his account balance to \$86,000 at a time when his checking account balance stands at \$850. Since the ABLE account balance is below \$100,000 it is once again exempt and his only countable resource is the \$850 in his checking account. Mario's SSI payments will be restored without the need for a new application.
- When the SSI payment is suspended due to excess ABLE account resources, Medicaid eligibility will continue.⁷
 - Example: Mario, from the examples above, had Medicaid eligibility continue when his SSI payments were suspended for 24 months based on excess resources caused by the ABLE account.

The Case of Wanda

Wanda is 16 years old, has an intellectual disability, and currently spends most of her school day in special education classes. Currently, she is in an employment training program, as part of her special education program, and the current long term goal is for her to work in a supported employment position with job coaching services.

Wanda received SSI from age 7 until age 11 when, in 2013, her mother returned to work, resulting in a termination of SSI due to parental income.

⁷ POMS SI 001130.740 D.1. We caution readers that while the cited policy does allow Medicaid to continue despite an ABLE account balance of more than \$100,000, since Medicaid eligibility will be tied to SSI status in 41 states, we believe countable resources (other than the ABLE account) must still be below the \$2,000 SSI resource limit in those states. In the remaining nine section 209(b) states, that opted to determine Medicaid eligibility separately, the ABLE account should still be an exempt resource but the person will have to meet any state-specific resource test to keep Medicaid. POMS SI 01715.010.

Wanda's parents established an ABLE account for her in October 2016 and she has \$16,500 in the account as of February 2018. The parents hope to contribute about \$3,000 to \$4,000 to Wanda's ABLE account each year. Based on her disability and the expectation that Wanda will be eligible for SSI at age 18, when the SSI program no longer counts parental income and resources, her parents pose a series of questions (analysis follows each question):

1. Since the ABLE account balance is likely to exceed \$20,000 by Wanda's 18th birthday, must the ABLE account be reduced below \$2,000 before she can be eligible for SSI?

Analysis: There is no need to reduce the ABLE account balance below \$2,000 to establish eligibility for SSI. Under SSI's 2016 ABLE policy, the value of assets retained in an ABLE account, up to \$100,000, is exempt and will not count toward SSI's \$2,000 resource limit.

2. Wanda and her parents have visited a special supported housing program for adults with intellectual disabilities and Wanda would qualify for it after she turns age 21 and completes her public school special education program. Average rent for this program is \$400 per month and Wanda would have to pay a separate monthly fee for her share of food costs. Wanda and her parents are both excited about her going into this housing program in the future. The parents ask two questions: 1) Can ABLE account funds be used to pay for the rent in this program? 2) If the ABLE account funds are used to pay for the rent, will the SSI payment be reduced each month?

Analysis: 1) ABLE account funds could be used to pay for the monthly housing costs, as housing expenses are a "qualified disability expense (QDE)."⁸ 2) Ordinarily, when a third party pays housing costs for an SSI beneficiary, this would be considered in-kind support and maintenance and the SSI payment could be reduced by up to one third of the SSI federal benefit rate (i.e., up to a \$250 per month reduction in 2018). However, under SSI's ABLE policy, an ABLE distribution to pay for housing expenses is a QDE and will not be considered income to the SSI beneficiary. In Wanda's case, the SSI payment would not be affected by ABLE account payments for rent.

3. Wanda is expected to have a paid job placement during the summer of 2018. She is expected to earn \$600 to \$800 during the summer (i.e., July and August 2018). The parents and Wanda ask: 1) Can Wanda deposit a part of her wages into the ABLE account? 2) If yes, how will

⁸ POMS SI 001130.740 B.5.

Wanda's deposit into the ABLE account affect her monthly SSI payment?

Analysis: 1) Wanda can deposit her own income, including wages from a job, into the ABLE account. In fact, even if her parents were expected to contribute up the 2018 limit for ABLE accounts, \$15,000, end-of-2017 ABLE Act amendments now allow the beneficiary to exceed the \$15,000 contribution limit if depositing a part of his or her own wages into the account.⁹ 2) If an SSI beneficiary deposits his or her own money into the ABLE account, that money will still be considered income for SSI purposes unless a specific SSI rule would exclude all or part of that income. In Wanda's case, she will benefit from SSI's Student Earned Income Exclusion rule and all of her monthly income, up to a maximum of \$1,820 per month (up to \$7,350 per year), is excluded and not counted.¹⁰ This means that none of her roughly \$300 to \$400 per month wages during July and August 2018 will count and her SSI payment will remain the same.

Conclusion

This case summary has explained how the new SSI rules, related to ABLE accounts, will allow an individual to retain SSI payments while accumulating exempt resources in this special account. The case of Wanda shows how the ABLE account and SSI rules could work together in a real case.

Future publications in this series will provide examples of a range of other benefits and how the ABLE account can be used to complement those other benefits. We will also show how the ABLE account might be used differently by people with a range of other disabilities, other needs, and other plans for work and independence.

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⁹ See amendments to ABLE Act in sections 11024 and 11025 of the Tax Cuts and Jobs Act of 2017.

¹⁰ See POMS SI 00820.510. Ordinarily, the first \$65 of the SSI beneficiary's gross monthly wages are excluded and not counted (\$85 if \$20 general income exclusion not applied to unearned income) and 50 percent of the remaining income is excluded. See Sheldon, J. & Lopez, E., *Supplemental Security Income, Medicaid and Work: Guidelines for Proactively Using the SSI and Related Medicaid Work Incentives to Help Individuals with Disabilities Maximize Independence Through Work*, <http://www.nymakesworkpay.org/docs/SSIMedicaidPolicyPracticeBrief042010.pdf>, for a very detailed explanation of the SSI rules and work incentives related to work and earnings.