

The ABLE Case Summary Series

Using ABLE Accounts to Support the Transition from School to Adult Training, Higher Education, Work and Independent Living

This is the sixth 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 ABLE regulations were published by the Department of the Treasury on June 22, 2015 and have not been issued as final.² ABLE accounts offer qualified individuals with disabilities an opportunity to save funds, in a dedicated account, to meet “qualified disability expenses (QDE)” that will allow them to improve health, independence and quality of life. The first ABLE accounts were introduced in the late spring and summer of 2016. As this is written, more than 33,000 individuals have established an ABLE account in one of the more than 41 states that have established and maintain active accounts.

This article focuses on the use of ABLE accounts to support the transition of young people with disabilities from public school programs to adult training programs, higher education, work and independent living. The term “transition-aged youth,” as used in this publication, refers to young people between the ages of 14 and 24 as that is the age range recognized for “youth with disabilities” in the federal regulations governing state vocational rehabilitation (VR) programs.³

Assumptions about the ABLE-Eligible, Transition-Aged Population

We assume the following about youth, ages 14 through 24, who are likely to be candidates for ABLE accounts:

¹ 26 USC 529A.

² 80 Federal Register 35602-01.

³ 34 CFR 361.5(c)(58).

- Most will meet the Supplemental Security Income (SSI) disability criteria⁴ and become eligible for SSI no later than their 18th birthday when the SSI program no longer counts the income and resources of their parents.
- Most will become Medicaid-eligible no later than age 18 because Medicaid is automatic for SSI beneficiaries in 41 states, with youth in the remaining section 209b states potentially Medicaid-eligible under state-specific criteria.
- Some will, before or after age 18, become eligible for a state-specific Medicaid waiver program which allows for specialized services not otherwise available through the traditional Medicaid program.
- Most will have goals related to independent living, in either their own homes/apartments or within the family home.⁵
- A significant percentage will have long-term goals for full-time or part-time competitive employment and be expected to benefit from the services of their state's VR and/or Commission for the Blind agencies.
- A significant percentage will be expected to participate in either adult vocational training programs or higher education programs.

Opening an ABLE Account Before Eligibility for SSI and Medicaid

The Case of LP (2018): LP is 15 years old. She has mild cerebral palsy and a significant learning disability. She uses a cane or wheeled walker for mobility depending on the distance she needs to cover. LP has received special education services for the past nine years, attending regular classes with significant resource room help to assist her with reading written material. Her individualized education plan (IEP) calls for test questions to be read to her as necessary. LP lives with her mother and younger brother. LP received SSI payments from ages seven through nine, until her mother started working full-time. Because her mother currently works and earns more than \$60,000 per year, that income will make LP ineligible for SSI until she turns 18.⁶

Setting Up a Special Needs Trust (SNT) (2014): When LP was 11 years old, her grandmother died, leaving \$40,000 in her will to each of four grandchildren (\$160,000 in total) to be put into trust accounts. Since LP was likely to be an SSI beneficiary in the

⁴ To meet the disability criteria for use of an ABLE account, the person must either be in receipt of SSI or Social Security disability payments; or have a certification from a doctor that their disability has lasted or is expected to last 12 consecutive months, or result in death, and results in marked and severe functional deficits. 26 USC 529A(e)(1) & (2).

⁵ Federal special education laws and regulations require that students, beginning at age 16 or earlier, are to receive "transition services" to prepare them for both independent living and community participation. 20 USC 1401(34); 34 CFR 300.320(b).

⁶ The SSI program stops counting parental income and resources when a child turns age 18.

future, the will directed that her inheritance was to be placed in an SNT, so as not to affect her SSI eligibility. An SNT was created for LP in July 2014 with an initial \$40,000 deposit from the inheritance. NOTE: No ABLE accounts existed in the country until the late spring or early summer of 2016.

Creation of ABLE Account (2016): LP's state was among the first to establish an ABLE account in the fall of 2016. Thereafter, LP's mother set up an in-state ABLE account for her in October 2016, at age 13, with an initial deposit of \$500. The attorney who prepared the SNT paperwork in 2014 advised LP's mother that the ABLE account would complement the SNT and offer some flexibility in the future if LP qualifies for SSI at age 18.⁷ The attorney also noted that LP could set up an ABLE account in her home state or any other state that allowed non-residents to enroll. Each year, beginning in 2017, LP's mother hopes to put at least \$1,500 from her income tax refund into the ABLE account.

Deposits and Balances in SNT and ABLE Accounts through 2021:

<u>Year</u>	<u>Trust</u>	<u>ABLE Account</u>
2014 (age 11)	\$40,000	n/a
2015 (age 12)	\$0	n/a
2016 (age 13)	\$0	\$500
2017 (age 14)	\$0	\$1,500
2018 (age 15)	\$0	\$1,500
2019 (age 16)	\$0	\$1,500
2020 (age 17)	\$0	\$2,000
2021 (age 18)	\$0	\$3,250 (includes graduation gifts)
7/1/21 balances, with modest earnings	\$44,500	\$11,750

Payment for Special Tutoring Program for LP in 2019-20: Should It Be Through Trust or Through ABLE Account?

In 2019, LP is 16 years old and completing her second year of high school. She continues to be in mainstream classes with special education services that include resource room assistance and testing modifications to allow exam questions to be read to her. LP and her mother identify an evening tutoring program that works with students with learning disabilities to develop alternative strategies for reading and other academic activities. The intensive tutoring program will cost \$1,500 per semester for a two-night per week program for 12 weeks. The goal is for this to better prepare LP for taking more advanced placement courses and for attending college.

Since the special education program has refused to fund this program and LP's mother prefers to enroll LP right away and not fight the system, she and LP want to use either

⁷ See Case Summary # 3, *ABLE Accounts Compared to Special Needs Trusts: When is One or the Other Preferred? When do Both Work Well Together?*

the trust or the ABLE account to pay for the fall and spring semesters, a total of \$3,000. The attorney who drew up the SNT papers suggests taking the money from the trust, subject to the trustee's approval (LP's aunt is the trustee), and retaining the current balance in the ABLE account (almost \$5,500 in 2019). This is because there is flexibility in the ABLE account to eventually pay for LP's housing costs if she attends college in the next few years, without any impact on SSI if SSI is approved at age 18 (see discussion below).

Readers should note that if there was no SNT and we were only talking about funds in the ABLE account, payments for an educational expense, like a tutoring program, would meet the qualifications as a QDE.⁸

Maintaining Medicaid Waiver Program Eligibility Through Use of an ABLE Account (2019)

In addition to the traditional Medicaid program, all states also fund services through one or more optional Home and Community-Based Services (HCBS) Medicaid waiver programs. An HCBS waiver, approved by the federal Centers for Medicare and Medicaid Services (CMS), allows a state to operate outside the confines of specified federal mandates, often to test innovative approaches to deliver services or to extend or expand coverage for a targeted population. Although states are not required to implement Medicaid waiver programs, all states have, historically, had one or more CMS-approved HCBS waivers.

A number of states implement HCBS waivers for children with a range of intellectual or other developmental disabilities. In addition to targeting a specified disability group for extra services, the specific waiver may also waive the requirement that the Medicaid agency consider the income and resources of the child's parents. Even when parental income is ignored, this kind of Medicaid waiver typically requires that the child meet certain income and asset tests based only on the child's income and assets.⁹

LP's HCBS Waiver Service and Her ABLE Account: In 2019, at age 16, LP applies for and meets the disability criteria for her state's waiver for children under age 21 with an intellectual or other developmental disability. This waiver will not count her parent's income and resources, but will, in determining LP's eligibility for traditional Medicaid, count her income and resources (countable income limit of \$1,050 per month and countable resource limit of \$3,000, figures that are unique to her state). LP's only income is \$600 gross per month during the summer months (with no income the rest of the year). She only has \$50 in her bank account and \$5,500 in her ABLE account when she applies for the waiver.

⁸ 26 USC 529A(e)(5).

⁹ See, e.g., New York's *Care at Home Waiver* (for children with developmental disabilities and complex medical needs), requiring that eligibility is based on the child's income only, <http://www.kidswaivers.org/ny/>. Essentially the same rules are applied in *Missouri Children's Developmental Disabilities Waiver*, <https://dmh.mo.gov/dd/progs/waiver/sjlmw.html> and in many similar HCBS waivers throughout the country.

The HCBS waiver finds that LP is eligible for the program, not counting her mother's income and resources and not counting the assets in her ABLE account pursuant to the federal CMS policy of September 2017.¹⁰ While all waivers will be a bit different, we will assume that this waiver is authorized to fund a high-quality laptop computer for home and school use, specialized software as recommended by LP's evening tutoring program and six hours of training to help her learn how to use the laptop and software. The waiver also provides LP with a case manager who will help her identify services she needs to progress into college and independent living. Because the computer is purchased through the waiver and not through the special education program, LP will own it and be able to take it with her when she begins attending a college or community college program after high school.¹¹

LP Turns 18 (2021) and Is Approved for SSI Despite ABLE Account Assets

In April 2021, less than two months before high school graduation, LP turns 18 and is approved for SSI with payments beginning in May 2021. Although she now has more than \$40,000 in the trust and more than \$10,000 in the ABLE account, the assets in each account are excluded and do not impact her SSI eligibility.¹² LP will get the 2021 federal SSI rate, a small state supplement and will be eligible for Medicaid, as Medicaid is automatic for SSI beneficiaries in her state.

LP Graduates from High School (2021): Family and Friends Are Encouraged to Make Gifts Directly to the ABLE Account

In June 2021, LP graduates and the invitation to her graduation party encourages everyone to consider making any gifts as deposits to her ABLE account, with the understanding that this will allow LP to meet future college expenses not met by other sources. The result is that \$1,250 worth of gifts gets added to her ABLE account. Because these gifts go directly into her ABLE account and do not come to LP, the SSI program does not consider these to be LP's income and her SSI payment is not reduced.

LP Starts College (2021): ABLE Account Payments for Rent, College Expenses Not Covered by State VR Agency

Following high school graduation, LP enrolls in the state university about 45 minutes from her home. Her state VR agency will pay for her tuition, fees and books, after she exhausts available state and federal grants. LP and her mother decide that she will live

¹⁰ Center for Medicare and Medicaid Services, Dear State Medicaid Director Letter, SMD # 17-002, regarding *Implications of the ABLE Act for State Medicaid Programs*, www.medicaid.gov/federal-policy-guidance/federal-policy-guidance.html (9/7/17).

¹¹ In most states, the school district's special education program will retain ownership of personal-use items like laptop computers when the child using it graduates from high school.

¹² A trust is only excluded by SSI as a resource if drafted to meet SSI exclusion criteria. See Section L of <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120200>. We assume this trust meets that criteria.

in a one-person apartment near the campus, rather than in the dorms, as she needs a quiet environment with no distractions because of her learning disability. The rent, including all utilities, will be \$750 per month – well beyond her ability to cover from her SSI payment.

Effective September 2021, LP has an \$11,750 balance in her ABLE account. Starting that month, LP makes distributions from the ABLE account to pay the \$750 per month rent, a total of \$9,000 for the 12-month period ending 8/31/22. Pursuant to SSI policy, since the rent payments are QDEs they are not considered income to LP and do not reduce her SSI payment.¹³

Expected ABLE Savings and Distributions During Remaining College Years

After using ABLE distributions to pay rent during her first year of college, LP's ABLE account balance is down to about \$4,000 as she enters her second year of college (assuming \$9,000 spent on rent and annual contributions from LP's mother continue). Since the reduced balance in the ABLE account will not be enough to cover rent for the next year, what options does LP have?

The following are some options LP and her mother will need to consider:

- With the SNT balance now in excess of \$40,000, talk to the SNT trustee about moving enough money from the trust into the ABLE account to cover LP's rent (or part of her rent, with the SSI payment used to meet a part of the rent). Doing so would retain a reasonable balance in the ABLE account and the SSI program would not count the contributions for rent by the ABLE account as income to LP, meaning her SSI payment would stay the same.
- LP should be made aware of the SSI Student Earned Income Exclusion (SEIE), available to her if she is an employed, full-time student under age 22 regularly attending school. Under 2019 SEIE criteria, the first \$1,870 gross per month of earnings will be ignored and not used to reduce her SSI payment (up to a yearly maximum of \$7,550). If she works and benefits from the SEIE, she may be able to save some of her earnings in the ABLE account.
- LP's mother should consult a tax professional about the ability to continue listing LP as a dependent on her tax returns if she continues to provide some support to her throughout college. She should also inquire about any special deductions or tax credits that might be available based on her partial support for LP's studies.
- Since LP is expected to continue receiving SSI through her college years, her SSI beneficiary status will continue to make her exempt from her state VR agency's financial needs test.

¹³ POMS SI 01130.740 C.4.

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- LP may want to advocate to have the VR agency pay a part of her housing costs, as the VR agency is authorized to provide monetary support for shelter costs that “are in excess of normal expenses” and necessitated by the VR agency-sponsored college program she is attending.¹⁴
 - When LP becomes employed, she may wish to consider making an appointment for individualized work incentives counseling from a Certified Work Incentives Counselor (CWIC). The CWIC can help LP understand what SSI work incentives she can use and which will enable her to retain more income. This income, in turn, may be deposited into an ABLE account. They can also tell her whether she is eligible to deposit additional money into her ABLE account under ABLE to Work provisions.¹⁵

Conclusion

This short article has presented a number of possibilities for the use of ABLE accounts for transition-aged youth with disabilities, ages 14 to 24, as they progress through high school, prepare for college and attend college. For these young people, the ABLE account represents a way to save money for expenses not covered through other means, while maintaining eligibility for things like SSI, Medicaid and Medicaid waiver programs.

In the LP example used above, considerable resources were available from the grandmother, in particular, to allow LP to use a combination of an SNT and an ABLE account. Keep in mind that many of the uses of an ABLE account (with or without an SNT in the picture) illustrated through this case scenario will be available to ABLE account owners and their families with much more limited resources.

¹⁴ See 34 CFR 361.48 and 361.5(b)(34), authorizing rental payments under the definition of maintenance.

¹⁵ To locate free CWIC services in your state or region of the state, go to Social Security’s Work Site, <https://choosework.ssa.gov/findhelp/> (and follow links to search for the Work Incentives Planning and Assistance or WIPA program near you).