**Podcast 3: Perspective on ABLE Accounts and Trusts**

**Stephen Dale and Amy Tessler**

Recorded:

Welcome to the ABLE to Save podcast series, brought to you by the ABLE National Resource Center, which is managed by National Disability Institute. Hear from leaders in the public and private sectors, as well as from ABLE account holders and their family members about how ABLE accounts can be an effective savings tool to help improve health, independence, and quality of life for people with disabilities. And now here's your host and director of the ABLE National Resource Center, Miranda Kennedy.

Miranda Kennedy:

We would like to thank ABLEnow and ABLEAmerica for their generous sponsorship of week three of our ABLE to Save campaign. Welcome to the ABLE to Save podcast series. My name is Miranda Kennedy and I'm the Director of the ABLE National Resource Center. And today we have with us, as our guests, Steve Dale and Amy Tessler. Steve is a disability rights advocate whose interest in the disability community began at an early age. He comes from a family of institutional workers that serve in California State Hospitals, and developmental centers for over three generations. Steve worked for 17 years as a psychiatric technician in a variety of institutions in California, and later became an intern at the Disability Rights Education and Defense Fund, working on disability access cases, and later transitioned to a private practice, focused on drafting and administering special needs trusts. Steve is currently the principal attorney at the Dale Law Firm, which is dedicated to providing quality estate planning to clients by working cooperatively with the clients tax, financial and insurance professionals.

Miranda Kennedy:

He is also the trustee of the Golden State Pooled Trust, which serves its beneficiaries in California. Part of his duties is to oversee a series of continuing education programs accredited by the California State Bar, which provides education to attorneys and trustees on a wide variety of disability related subjects, focused on quality of life for persons with disabilities. Steve serves on the boards of The Arc of California and the Contra Costa County Developmental Disabilities Council. He spends much of his time attending disability rights activities, including legislative hearings and serving on boards and committees with disability rights organizations. Steve is a longstanding member of the Special Needs Alliance , a national not-for-profit organization of attorneys dedicated to the practice of disability and public benefits law, who work in partnership with the ABLE National Resource Center as well.

Miranda Kennedy:

Now, let me tell you a little bit about Amy Tessler, who is also here with us today. Amys son, Scott, who is 24 years old now was diagnosed on the autistic spectrum when he was two years old. Just like most moms of special needs children, Amy immersed herself in learning about the vast number of autism therapies and hope of finding something that would really help. She attended conferences about how to plan for his future. Amy struggled with who would take care of Scott and his sister if something happened to her and her husband. As a result, they created a special needs trust for Scott when he was 10 years old, in order to establish a funding source and provide direction for Scott's safety and emotional wellbeing in the event of a worst case scenario. Even though Scott has a special needs trust, they also opened an ABLE account in March of 2018. So for our discussion today, Amy, let's start with you. As a parent of an ABLE account owner who also has a special needs trust, can you tell us, how did you first learn about ABLE accounts?

Amy Tessler:

Hi, Miranda. I initially heard about ABLE accounts at an autism conference at Stanford University back in 2016 from Stephen Dale. And it was actually Steve's firm that drafted Scott's special needs trust back in 2009. I heard his presentation and when I had the opportunity to ask a question, I asked Steve, "Why do I need an ABLE account if I already have a special needs trust?" I didn't follow his explanation, although I'm sure in retrospect it was perfectly clear, so I did nothing. At the time I was not even aware that there were ways to avoid a $250 reduction in SSI payment. We were just relieved that we got through the SSI process successfully. Fast forward to January of 2018, I responded to a job posting for an education and outreach coordinator for the Dale Law Firm. I quickly learned how Scott could benefit and immediately opened up an ABLE account for Scott. I became an ambassador for ABLE NRC in 2019 and have been educating others about ABLE ever since.

Miranda Kennedy:

Well, thank you Amy, for sharing that with us and I think that's also a really nice segue to what I want to ask Steve next. So Steve, as a special needs trust attorney who has experience and expertise with ABLE accounts, can you tell our audience in as simple of terms as possible, the difference between an ABLE account and a special needs trust.

Steve Dale:

The major difference between a special needs trust and an ABLE account, is that a special needs trust is a form of what's called a spendthrift trust. The reason that the assets in a special needs trust do not count against a beneficiary's public benefits is that the trustee has absolute control over every single expenditure. Meaning that a beneficiary could make the most reasonable request under the sun, but because the trustee has the ability to say, no, it's not considered a resource. An ABLE account, even though what it has in common is that the assets in an ABLE account don't count against eligibility for public benefits, an ABLE account is almost exactly the opposite. An ABLE account presumes that the person with the disability is in charge of the account and therefore has in many cases complete control over that account. Okay. And part of what we'll talk about is the pros and cons of that, depending on the situation.

Miranda Kennedy:

Well, considering that, the difference between the two, Steve and you really navigate that space quite a bit. Can you tell us what factors should someone use in determining which one, an ABLE account or a special needs trust is best for their situation?

Steve Dale:

And there's actually no real simple answer to that, just like many issues when we're dealing with disability here. And we always have to keep in mind that the disability community is diverse from group to group and person to person. So like my friend, Brian Ruben says, if you've met one person with autism, you've met one person with autism. But a couple of factors that I look at when I'm counseling families or making a decision as a trustee, is that one would be the capacity or financial literacy of my beneficiary. It's not uncommon that many folks with disabilities just don't have a lot of experience managing funds because they've never had that opportunity and ABLE gives that opportunity folks. And as I'll share later, here in my family, that's something that has been really useful.

Steve Dale:

Some of it has to do with the objectives of the person setting up the trust. So in many cases, for many families, I work with, what they're really focused on is trying to give their loved one with a disability as much control over their lives as possible. And that would weight towards the ABLE account. There are some families I work with and I do a lot of work with folks with behavioral health issues, that are really concerned that giving complete control over to their loved one could have negative results. So that would be another factor that we look at. And then obviously one of the really important things that an ABLE account can do, is that for folks with disabilities that are working, it's a great way to be able to increase the amount that they can set aside here and stay under the $2,000 resource limits. So for folks that are working, this is a real plus.

Miranda Kennedy:

Well, great, Steve, that's really helpful to talk about that because one of the things we talk about is how a person with a disability can open an ABLE account to save and invest money, to pay for qualified disability expenses and that they are the person who manages the money in their ABLE account. And that, that is different from someone with special needs trust as you just referenced, where it's the trustee who is really distinguishing how that money is input and spent as well. And I think you did just talk about why might that work best for some people and not for others, are there ever instances where you would really just go with one or the other?

Steve Dale:

Oh, of course. Here part of it might have to do with the size of the funds we're dealing with, but before ABLE accounts, we used to get, since I do so much work in this area and I work with a lot of civil rights groups, we would get small settlements and that kind of thing and it would be ridiculous. You might get something where somebody would get 10 or $12,000 and if you couldn't find some other way to deal with the situation you would end up having to do a special needs trust for that small amount, which once again, the ABLE account in many of those situations, here is a much more rational way of dealing with that kind of situation. There's just so many ways that it could be used. I'll mention that a lot of folks we deal with and once again, remember the disability community is diverse, my office tends to work with folks that are more cognitively challenged.

Steve Dale:

And so in many situations here that we found it very useful to hold many of the funds in the special needs trust and the social security and CMS, which oversees Medicaid had made it absolutely clear that you can transfer funds from a special needs trust to an ABLE account without penalties. So for many of the beneficiaries we work with, will basically transfer funds into the ABLE account as needed and use it as a tool to teach financial literacy here. And then as we get more and more comfortable, we can add more and more funds to this. And I have to say, I've had many of my beneficiaries who have done a great job learning how to manage funds and have rapidly been able to expand their ability to manage these accounts. And as we get more comfortable, then we can add more funds.

Miranda Kennedy:

Well, that sounds like a lot of really great opportunity there too, especially that financial education and capability piece and growing that. A lot of people tend to feel like they need to go to their financial advisor, attorney or social worker for advice about protected savings options for people with disabilities, to protect the person's public benefits. And that can be a best practice absolutely. But what would you say to the providers serving those people who have questions about protected savings options, Steve?

Steve Dale:

I deal with this all the time, with folks that are looking for simple answers to complex problems. And I think in a lot of cases, simple and stability are two words that just don't go together here. But education is really the key here. And the first place I would start with be the at ABLE National Resource Center, both their websites and their classes. I'm a strong supporter of the Special Needs Alliance , which would make sense because I'm a member of this. But the first place that I would start with would be the Special Needs Alliance. One, because they've had a special focus even before the ABLE Act was in place on ABLE and its uses. And they also have lots of materials and all of the members have taken classes on ABLE and that's a very good place to get started.

Miranda Kennedy:

Feels like a good time to mention a partnership we had between the Special Needs Alliance and the ABLE National Resource Center where we've developed, and actually just very recently updated our comparison chart, on ABLE accounts, special needs, trusts, and pooled trusts. And that was a shared endeavor between ABLE National Resource Center and Special Needs Alliance. And I know Steve you've certainly reviewed and given feedback on that. And so that's a great document and it'll be provided as a supporting document along with this podcast for people to be able to reference.

Steve Dale:

And Miranda, the other thing I would add if this is okay, is that for any professionals that are listening to this podcast, this is an area that really deserves more attention and something that you should look at digging into because there are so many different uses of ABLE accounts and so many challenges as well here. For instance, if you're a social worker that deals with folks with benefit issues, it'll help you spot situations where ABLE could be a great answer here and in some cases can be the simple solution and so really education is the key. For a financial advisor, if you're working with families, this is one of a number of tools and quite frankly, I would be very concerned if I were a family member, that if I were hiring somebody, a professional, who didn't understand the ABLE account here as an option. Because I would be concerned that they really don't understand all the different options for myself, if I'm disabled or for my loved one, if I'm a family member.

Steve Dale:

So education is the key and I know that has been a big focus of the ABLE National Resource Center. And I know your classes have been excellent.

Miranda Kennedy:

Well, thank you, Steve and I think you also really set us up nicely for this next question I have for both you and Amy, but I'd like to hear from Amy first, which would be, why would someone want to save money in an ABLE account? And why would they want to save in a special needs trust, Amy?

Amy Tessler:

Well, typically, special needs trusts are funded when whoever sets up the trust passes away, or as Steve says, when the trust matures. In my son's situation, since he received a monetary gift before ABLE accounts were available, his trust was actually funded when he was a young child. But even today, he would still need a special needs trust since the amount exceeded $15,000. Even though the funds are used for the beneficiary, as Steve said, the funds are technically not his, they are managed by a trustee and distributed when needed. On the other hand with an ABLE account, the money belongs to the beneficiary. Contributions can be used immediately to help one with almost anything one needs.

Amy Tessler:

Since one can only contribute 15,000 a year or more of working, you can start to save when you are really young and not worry about having to about exceeding the $2,000 limit if you end up applying for SSI. When your child is young, you're not sure, you know what's going to happen when they're 18, but in the event that they do end up with a disability that qualifies, then you don't have to worry about going over the amount in your savings account and having too much money to spend down. Scott can also use his ABLE account to pay for housing without a reduction in his SSI payment. Since the funds in an ABLE account belong to him, he is not receiving what is called in kind support from others. If he did not have sufficient funds in his ABLE account, we could still transfer funds from his special needs trust. SSI does not allow the special needs trust to pay for housing directly without a reduction in the SSI payment.

Amy Tessler:

If there are no immediate needs, one can still use an ABLE account to save for a longer term needs like a car, college or even a home. It really depends upon the individual and their unique situation. I really cannot think of a good reason not to have an ABLE account. One may not like to have a lot of money in the ABLE account if they are not financially prudent, it is relatively easy to load funds on a card and buy almost anything. So if one is not careful with money, it would be best to only use the ABLE account for convenience and to allow the beneficiary to have some financial independence. Other than that, the amount in an ABLE account is really dependent upon the unique situation, but having one seems like a no brainer.

Miranda Kennedy:

Well, thank you, Amy, for that insight, from your perspective as a parent of a young adult and who is navigating having both and making the best of both, I'll go ahead and ask you Steve, the same question from your separate viewpoint. Why would someone want to save money in an ABLE account and why would they want to save in a special needs trust?

Steve Dale:

There's a couple of things and let me piggyback on something that Amy said. One of the really cool things about an ABLE account is that the moment the funds go into the ABLE account, they belong to the person with the disability. And because of that, if you use funds for an ABLE account, if somebody were to contribute funds to an ABLE account, and then the ABLE account pays for food and shelter, then the social security administration has declared that it will not cause a reduction in their SSI for food and shelter. The social security administration is doing their best to review every expenditure from every single special needs trust. As a trustee, oftentimes we'll use an ABLE account, we transfer the funds from the special needs trust to the ABLE account because what the social security administration has also said is that expenditures from an ABLE account are not to be counted with some very rare exceptions against their SSI eligibility, even if they're not used for qualified disability expenses or QD ease.

Steve Dale:

This is huge because once again, trying to stay in compliance with the social security rules means that you have to keep really good books, but with control is a huge issue and we go back to this. For many folks with disabilities, control is not an issue and the fact that they have a disability just isn't relevant. For many folks with disabilities, they may have challenges as far as being vulnerable to being taken advantage of or that sort of thing. Or also maybe just don't have experience in managing funds. Or I work with a lot of folks with mental health issues who may have periods of time when they're able to manage things fine, but they may have periods where they aren't. And once again, for asset protection and that sort of thing, the special needs trust is probably a stronger tool. Then if we get into tax advantages, one of the really cool things about an ABLE account is that basically the investment growth is tax free. But on the other hand a special needs trust has certain tax advantages as well, including the qualified disability trust exemption.

Miranda Kennedy:

Well, Amy and Steve, thank you both for sharing some great strategies and guidance as well. And Steve, what you were just talking about, I think Amy certainly exemplifies why not have both in their situations that works very well for them? And developing that strategy whereby anyone who could use a special needs trust and an ABLE account in combination with each other, who is an SSI beneficiary, and being able to have an additional 3000 plus dollars a year, that they could put into that ABLE account and turn towards really some good qualified disability expenses to better their life experience, would certainly benefit from doing so. One thing you talked about Steve was the issue of control. And I think that is really important. And just to drill down a little more and it means different things to different people, right? But a question, a very common question that we get at the ABLE National Resource Center is that people want to know how funds in an ABLE account can be accessed, which again, control right? Versus how funds in a special needs trust account can be accessed.

Miranda Kennedy:

So could you tell us a little bit about the difference in accessing and the process of accessing those funds?

Steve Dale:

Well, I'll start with a personal story. I was privileged to be one of the first Californians to open up an ABLE account or assist in opening up a ABLE account for my niece here who has down syndrome and is on SSI. And what we wanted to do in that case is that once again, she had actually never purchased a single thing in her entire life, and she has been on an SSI her entire life. And the goal was to teach her financial literacy. Now my niece has a lot of abilities and that sort of thing, but the idea for keeping the checking account is just not something that she's skilled at, or at least at this time. So in her case, having a debit card was absolutely essential for her to be able to access those funds. And we actually watched over time, the first expenditures that she made were highly questionable and all of that. But as time went on and we worked with her that now she's using it for quite appropriate things.

Steve Dale:

And we're actually seeing her being able to use the ABLE account to a degree that we actually didn't think was possible. But like with many folks with disabilities, oftentimes they will far exceed your expectation. Now, in her case here, because she has access to the card, that's something she could do without assistance, rather than once again, trying to keep checking account. Now, she has her account with STABLE and of course there's many programs out there, but one special thing that's been really useful with the card is that's tied to what's called a true link card. So we're actually able to track those expenditures and have an idea in real time about what's going on. It's been a great tool for that.

Miranda Kennedy:

So that's a really great, valuable perspective on the importance and the distinction between the two. They're both very valuable and could be used together or separately, these are just somethings to think through. You mentioned about your niece and her increased financial capability and independence and how she's gone beyond where you thought she might be able to go, with being able to use her ABLE debit card effectively. And Amy, I'm just wondering if you could share with folks how that's really increased Scott's independence in terms of being able to use his debit card to get to and from different employment opportunities he's had, right?

Amy Tessler:

Yes. Scott started using his card tied to his ABLE account for when he was taking a transportation, like Uber, Lyft home from work. So that was really easy because he didn't have to deal with paying cash or taking out a credit card because it was just tied directly to his Lyft account. So that was really handy. So at this point in time, that's where he's primarily used his card. It was very easy.

Miranda Kennedy:

Amy, from your perspective, what do you think people still don't understand about ABLE accounts and special needs trusts that they especially need to know now while we're going through this pandemic?

Amy Tessler:

Well, just as Steve said, there's so much uncertainty right now with respect to funding of special needs programs and services, but it just makes sense to start saving now just in case. My son hasn't had supported employment for three months now and he hasn't had any services, everything's shut down in California. So why not put money away because we don't know how long this is going to last and there's really no downside to putting dollars away for the future. Setting up a special needs trust along with the proper support needed to administer it allows parents to have some peace of mind that their children will be taken care of in the future, which is most parent's greatest fear that, who's going to take care of my child when I'm not around? So it just makes sense to utilize an ABLE account in conjunction with a special needs trust if that's the best case for you, but to not save is really not a good situation for anyone.

Miranda Kennedy:

Thank you, Amy, for sharing that. It's interesting because for some and evaluating your need for public benefits, it's crucial and to work with a certified work incentive coordinator around that and looking at your benefits. But it's similar what you're talking about, Steve, with ABLE accounts, oftentimes people think an ABLE account is just to make sure you can maintain those public means tested benefits. And certainly you can do that with an ABLE account, but also you could qualify and benefit from an ABLE account and not beyond means tested benefits, is perhaps you're transitioning off of those benefits or you've been off of those benefits, you can still benefit from an ABLE account as well. So I think those are really great points that you're bringing up. And as we're wrapping up our time here with both of you on our podcast, I want to hand it to each of you just to give us what final piece of advice or tips might you have about ABLE accounts and special needs trust for those listening today?

Amy Tessler:

All right. Well, one of the reasons why I went to work at the Dale Law Firm as the education and outreach coordinator was to learn about special needs trust, and to learn about benefits and all the issues as parents, we have to deal with as to protect their futures and their lives. So my advice is get on, go to the website, learn as much as you can about all these different tools and then figure out what's what's best for you. Everybody's different, but education is really the key to knowing what to do.

Miranda Kennedy:

Thank you, Amy and Steve, what final piece of advice or tips might you have proposed?

Steve Dale:

Well, I'm going to back up with what Amy said. I think education is the key. I think without the education here, it'd be very hard to decide which tool or tools are best for you. And so, once again, the places that I go to are, once again, the specialneedsalliance.org website, the ABLE National Resource Center, which has all sorts of podcasts. Including a wonderful one that was sent with a Special Needs attorney some time ago, that gets into more detail on that kind of thing. The other thing to keep an eye out for you advocates out there is that I don't think the ABLE story is over here, that hopefully over time, and everything when we're dealing with planning for somebody with a disability for their futures longterm planning, is that not only do we need to educate ourselves, but also we need to take a look and work with the ABLE National Resource Center.

Steve Dale:

And as far as advocacy, to do things such as possibly increase the age that somebody could join with an ABLE account and all the different uses involved in doing this. So not only as far as education, is it important to understand how this new tool works for my loved one, but also to open yourself up a bit and think about the possibilities of how we could even improve this product as time goes on. To better serve persons with disabilities, to help them with the best quality of life possible, a quality of life that many of us take for granted here, but something that many folks with disabilities are striving to achieve on day to day basis. So as I mentioned, especially with the challenges going on with the pandemic and the budgets and benefit programs and all that, I can't think of a time that it's ever been more essential than it is today. So going back to this, education's the key. And when you're dealing with disability, education is a lifelong process. It's something that never ends.

Miranda Kennedy:

Well, Steve and Amy, thank you both so much for being here with us, for sharing your experience, your insight, your guidance, some great strategies as well. With this audience around that, we have a number of tools that are coming out. We also have our comparison chart on this topic as a resource as well, and we continue working together all of us. And thank you again for being here with us. We really appreciate your time and your work on this topic.

Steve Dale:

Well, thank you for having us and thank you for all the hard work that you folks do.

Miranda Kennedy:

We would like to once again, thank ABLEnow and ABLEAmerica for their generous sponsorship of week three of our ABLE to Save campaign.