

Special Needs Benefits A National Perspective

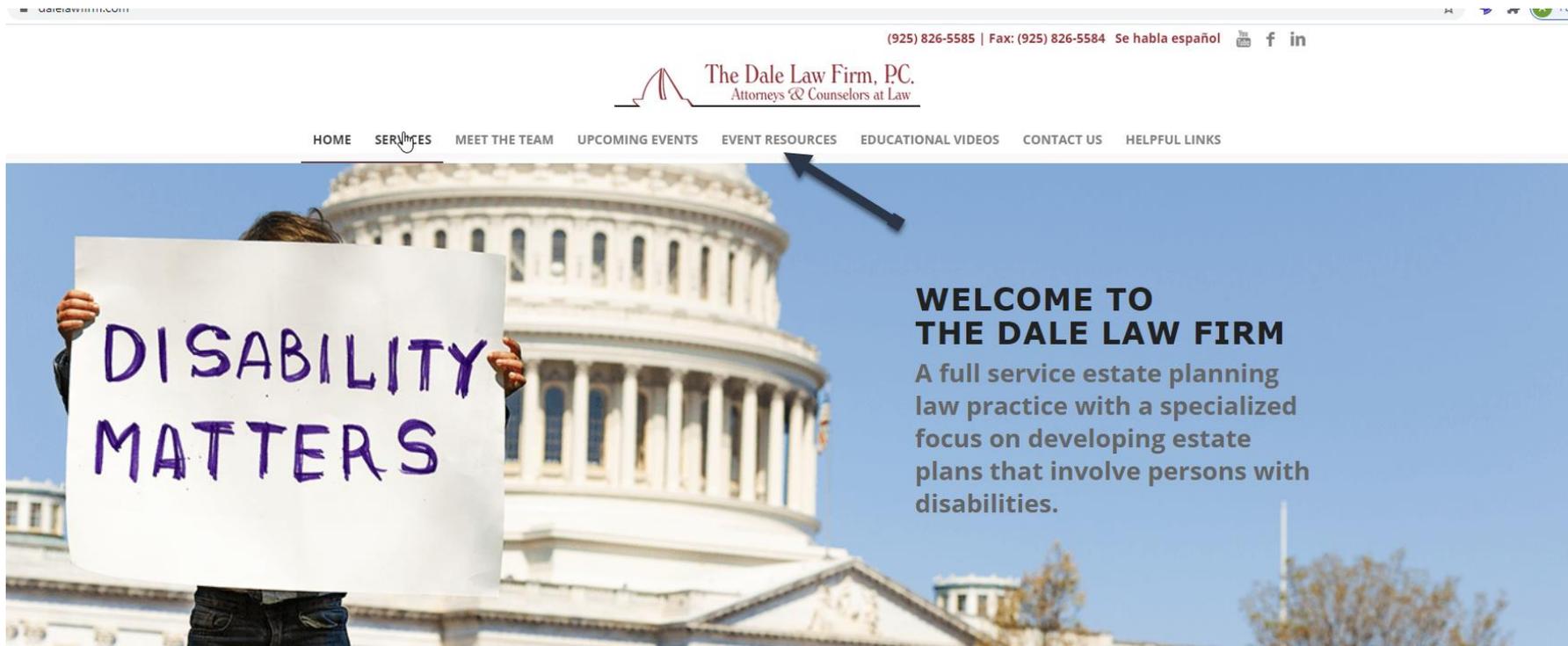
August 13, 2020

Presented by:

Stephen W. Dale, LLM, Esq.



For copies of the presentation
go to www.dalelawfirm.com
click on event resources



Meet Our Presenter



Stephen W. Dale

- Disability rights advocate
- Recipient of the prestigious 2010 Theresa Foundation Award and 2007 NAELA Powley Award
- Board of the ARC of California
- Trustee of the Golden State Pooled Trust
- Charter Member of the Special Needs Alliance
- Public service website: www.dalelawfirm.com
- Golden State Pooled Trust www.gspt.org

Imagine

- You have a 17 year old daughter named Kathy who has a significant disability.
- Kathy is likely to need some level of assistance for the rest of her life.
- You come to the estate planning attorney to provide for her needs in the event of your incapacity or death.
- Kathy is otherwise healthy and is likely to live 70 years or longer.



The Challenge

- ▶ Benefit laws may will change
- ▶ Social service systems will change
- ▶ Her condition may change
- ▶ Her advocacy system may change
- ▶ Attitudes may change
- ▶ The amount of resources she needs may change
- ▶ Trustee options will change



Public Benefits A Review

Identifying Client's Benefits

- Benefit recipients are often confused about what benefits they are receiving
 - SSI vs. SSDI
 - Medicaid services may not be apparent
- Amount of cash benefit may help identify program
- Benefits Verification Letter can be requested at [ssa.gov](https://www.ssa.gov)

.

A Primer on Public Benefits

Needs Based Benefits

- Supplemental Security Income (SSI)
- Medicaid
- Food stamps, legal aid, and utility payment assistance
- Housing subsidies (H.U.D. or Section 8)

Entitlement Benefits

- Social Security Disability Insurance (SSDI)
- Medicare
- Special Education

A Primer on Public Benefits

	Needs Based Benefits	Benefits based on Entitlement
Cash Assistance	Supplemental Security Income	SSDI* (Social Security Disability Insurance) DIB, CDB, DWB
Medical Assistance	Medicaid	Medicare

Social Security Disability Insurance Includes : 1) Disability Insurance Benefits; 2) Children's Disability Benefits; and 3) Disabled Widow's Benefits

Supplemental Security Income

SSI is a federal program, administered by the Social Security Administration (SSA) that provides cash for people with disabilities and the elderly who are very low-income.



Supplemental Security Income

SSI is intended to pay for the beneficiary's food and shelter (including utilities).



Supplemental Security Income

- The SSI rate for **2020**:
 - **\$783** for an individual
 - **\$1,175** for a couple



- Some states supplement SSI, so recipients may get a higher amount

Three Part SSI Test



Be Elderly (65+) or Disabled



Income Test



Resource Test



Social Security Definition of Disability

A benefits recipient must be a person under the age of 65 who is not be able to engage in substantial gainful activity (SGA) because of a medically-determinable physical or mental impairment(s) that is expected to last a year or longer or end in death.



Social Security Definition of Disability

- Monthly SGA amount for non-blind individuals:
 - **\$1,260 in 2020**
- Monthly SGA amount for blind individuals is **\$2,110**.



Types of SSI Income

Unearned Income	Earned Income	In-Kind Support & Maintenance
Includes cash gifts, payments from annuities and pensions, alimony & support payments, dividends, interest, rents, awards and payment from other benefit programs.	Consists of wages, royalties, net earnings from self-employment, and any honoraria received for services rendered.	Actual receipt of food or shelter, or something that can be used to get one of these.
Reduces benefits dollar for dollar after the first \$20	Reduces benefits one dollar for every two dollars after the first \$65 earned monthly	Reduces benefits dollar for dollar up to a maximum of \$281

In-Kind Support & Maintenance

- Payment of food or shelter from a source other than the benefits recipient (including SNT) will reduce the recipient's SSI dollar for dollar capped at what SSA calls the **Presumed Maximum Value (PMV)**
 - The PMV amount is $\frac{1}{3}$ of the federal benefit amount + \$20.
 - In **2020**, the PMV is **\$281**.

10 Items = Food & Shelter

1. Food
2. Mortgage (including property insurance)
3. Real property taxes (less any tax rebate/credit)
4. Rent
5. Heating fuel
6. Gas
7. Electricity
8. Water
9. Sewer
10. Garbage removal

Basics of SSI Eligibility Resources

- Cash or anything that can be converted to cash for support is a resource.
- If resources exceed \$2,000 on the first day of a calendar month, the beneficiary's public benefits will be lost until resources are reduced.

Basics of SSI Eligibility Resource Exemptions

A home is exempt, if the beneficiary has an ownership interest and it serves as his/her principal residence.



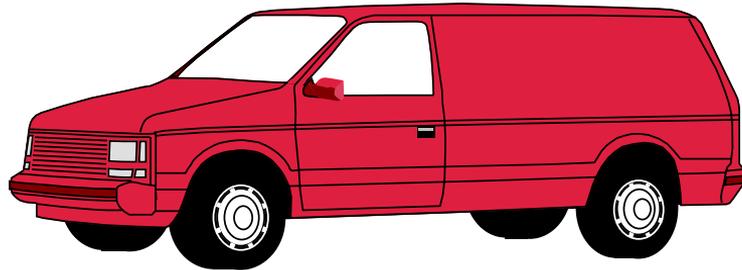
Basics of SSI Eligibility Resource Exemptions

- Household goods of any value
- Clothes and accessories
- Items held for their intrinsic values are not exempt



Basics of SSI Eligibility Resource Exemptions

One automobile of any value



Basics of SSI Eligibility

Resource Exemptions

Items related to the disability



Basics of SSI Eligibility Resource Exemptions

- Life insurance policies with cumulative cash surrender value of less than \$1,500
- All term life insurance
- A burial plot, or other burial space, worth any amount
- Up to \$1,500 set aside for burial expenses

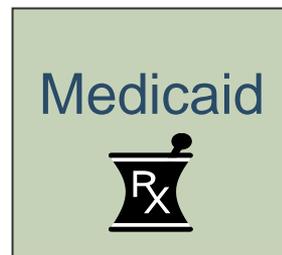


SSI & Medicaid

If an SSI beneficiary receives at least \$1 of SSI, then in most states the beneficiary will receive full scope free Medicaid automatically.



=



9 States Do Not Link SSI and Medicaid Eligibility

1. Connecticut
2. Hawaii
3. Illinois
4. Minnesota
5. Missouri
6. New Hampshire
7. North Dakota
8. Oklahoma
9. Virginia

Medicaid



Medicaid Programs

- While Medicaid is a federally funded health program, it is administered at the individual State level.
- The programs, eligibility criteria, and available services vary from State to State.
- It is important that you familiarize yourself with the programs and services available in your State.



Medicaid Basics

Each State must provide certain mandatory benefits which include:



- Inpatient hospital services
- Outpatient hospital services
- Home health services
- Physician services
- Laboratory and X-ray services
- Transportation to medical care
- Long-term/nursing home care

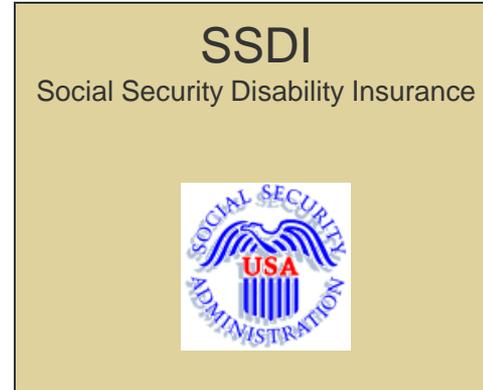
Home Care Services

- All states offer some level of services to assist persons who receive Medicaid to remain safely in their own homes and avoid long-term care.
 - These services may include personal care services, domestic services (meal preparation, laundry, shopping, cleaning) and accompaniment services to medical appointments or programs.
 - May also include home access/modification assistance.

Social Security Disability Insurance

Disability Insurance Benefits (DIB)

Social Security Disability Insurance is a national program for injured workers that have the requisite number of work credits in the Social Security system.



Social Security Disability Insurance

SSDI has no income or resource limits. An SSDI recipient could win the lottery and remain eligible but earned income may cause ineligibility for benefits.



SSDI - Childhood Disability Benefits

An adult disabled child may be eligible for Social Security benefits if:

- A parent is deceased or is receiving Social Security;
- The child was disabled before age 22;
- The child has never been substantially, gainfully employed.



Childhood Disability Benefits

Benefits do not become payable until the eligible parent dies, retires, or becomes disabled.



Childhood Disability Benefits

- Upon the disability or retirement of the parent, the child will receive an amount equal to $\frac{1}{2}$ of the parent's benefit.
- Upon the death of the parent, the child will receive an amount equal to $\frac{3}{4}$ what the parent's benefit.



Childhood Disability Benefits

Example:

- Helen has been disabled from birth, and is receiving **\$783** in SSI
- Helen's father, Earl, retires and receives \$1,400 a month. Helen begins to receive SSA of \$700 per month
- Receipt of the CDB is unearned income which reduces Helen's SSI by \$680.
- Helen now receives **\$103** SSI and \$700 CBD



Childhood Disability Benefits

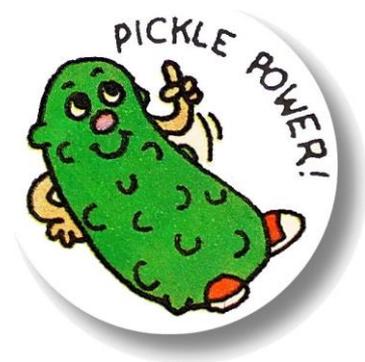
Example

- Earl, dies and Helen begins to receive \$1,050 per month in CDB.
- Helen's SSI is eliminated completely.
- She maintains Medicaid and Medicare



Childhood Disability Benefits

If an adult disabled child loses SSI benefits because of receipt or increase of CDB, the child retains SSI-linked Medicaid.



Childhood Disability Benefits

- Medicare is a federal health insurance program for people over 65 and people under 65 who have been receiving Social Security based on disability for two or more years.
- Medicare is not means-tested.
- Persons can be eligible for both Medicare and Medicaid.

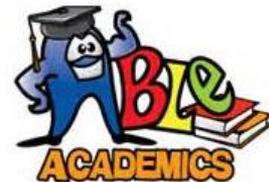
.

A grayscale photograph of a person's hands holding a glowing lightbulb. The person is wearing a white shirt and a dark tie. The lightbulb is the central focus, emitting a soft glow. A blue rectangular box is overlaid on the image, containing the text 'ABLE Accounts'. Three yellow curved lines are on the left side of the image. A blue horizontal bar is at the bottom of the slide.

ABLE Accounts

ABLE Account

- An ABLE account can be opened by a beneficiary, parent, guardian/conservator or agent designated through power of attorney.
- The beneficiary must have become disabled before age 26.
- The account may be opened in any state with an active ABLE program.



ABLE Account

- An individual can only have one ABLE account.
- If an individual has multiple accounts, only the earliest account gets the provided tax and benefits protections.
- The funds in any subsequent account will be considered an available resource for both SSI & Medicaid.



ABLE Account

- Contributions to an account are limited to a cumulative amount equal to the federal gift tax exclusion, currently **\$15,000** per year.
- The maximum aggregate contributions cannot exceed the amount set under the state's 529 college savings plan program.



ABLE Account

“Qualified disability expenses” are those related to the beneficiary’s disability, and include education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses which are approved by the Secretary of the Treasury.

ABLE Account

- The proposed regulations expand “qualified disability expenses” to include basic living expenses and are not limited to items for which there is a medical necessity, or which solely benefit a disabled individual.
- Social Security regulations do not consider distributions for housing as ISM.



ABLE and the Medicaid Payback

Medicaid Recovery	ABLE Account	3 rd Party SNT
<p>Medicaid used for medical purposes after age 55. This would include any residence owned by a Medicaid recipient upon their death. (This is the general rule, but subject to variations from state to state)</p>	<p>The amount of any such Medicaid payback is calculated based on amounts paid by Medicaid after the creation of the ABLE Account</p>	<p>No lien</p>

**SIGNATURE AUTHORITY TO
ESTABLISH AND MANAGE
THE ACCOUNT**

Establishment and Management of an ABLÉ Account

The only persons that can establish or have signature authority over an ABLÉ Account are

- the eligible individual
- the eligible individual's agent under a valid power of attorney or if none,
- his or her parent or
- legal guardian or conservator.

Establishment and Management of an ABLER Account

- Unless the ABLER beneficiary lacks capacity, they have first priority to manage the account regardless of who established the account or if signature authority was delegated by a power of attorney.

Capacity and ABLER Accounts

Scenario:

- Fred and Wilma have a daughter named Pebbles who was born with a severe developmental disabilities.
- Fred and Wilma establish an ABLER Account under their authority as Pebbles' parents.
- Pebbles lacks capacity to manage her account or to execute a power of attorney.
- Fred and Wilma maintain signature authority over the account as parents.

Capacity and ABLE Accounts

Scenario:

- Fred and Wilma passed away in a tragic accident, and their neighbors and best friends Barney and Betty step in to take care of Pebbles.
- In order for Barney and Betty to assume signature authority over Pebbles' ABLE account they will need to become Pebbles' guardian or conservator.

Management of ABLE Account

- If the ABLE Beneficiary has capacity to manage his or her account, have the beneficiary establish a power of attorney in the event that the beneficiary loses capacity in the future,
- If the designated beneficiary lacks capacity to manage the account and you have signature authority, think about how to have some way to have a successor take over in the event of your incapacity or death.

ABLE ACCOUNTS & HOUSING FOR SSI RECIPIENTS

ABLE Account Distributions

- The Social Security Administration recently directed that distributions from an ABLE account do not count as income regardless of whether the distributions are for non-housing QDEs, housing QDEs, or non-qualified expenses.

Example - A little Help From Friends

- Belinda has been disabled from birth, and receives \$783 a month in SSI.
- A major expenditure for her are housing and utility payments.
- She would like to move to a nicer apartment that would cost \$1,000 a month.
- She will need some assistance in order to make the move

Example - A little Help From Friends

- If Belinda's parents were to give her \$1,000 a month directly it would be counted as unearned income and eliminate her SSI completely.
- If her parents were to pay the landlord directly – the payments would count as ISM and her benefits would be reduced completely
- If instead they were to contribute \$1,000 a month to her ABLE Account, and in turn the funds from the account were to pay the landlord then there would be no reduction of SSI.

Example - A little Help From Friends

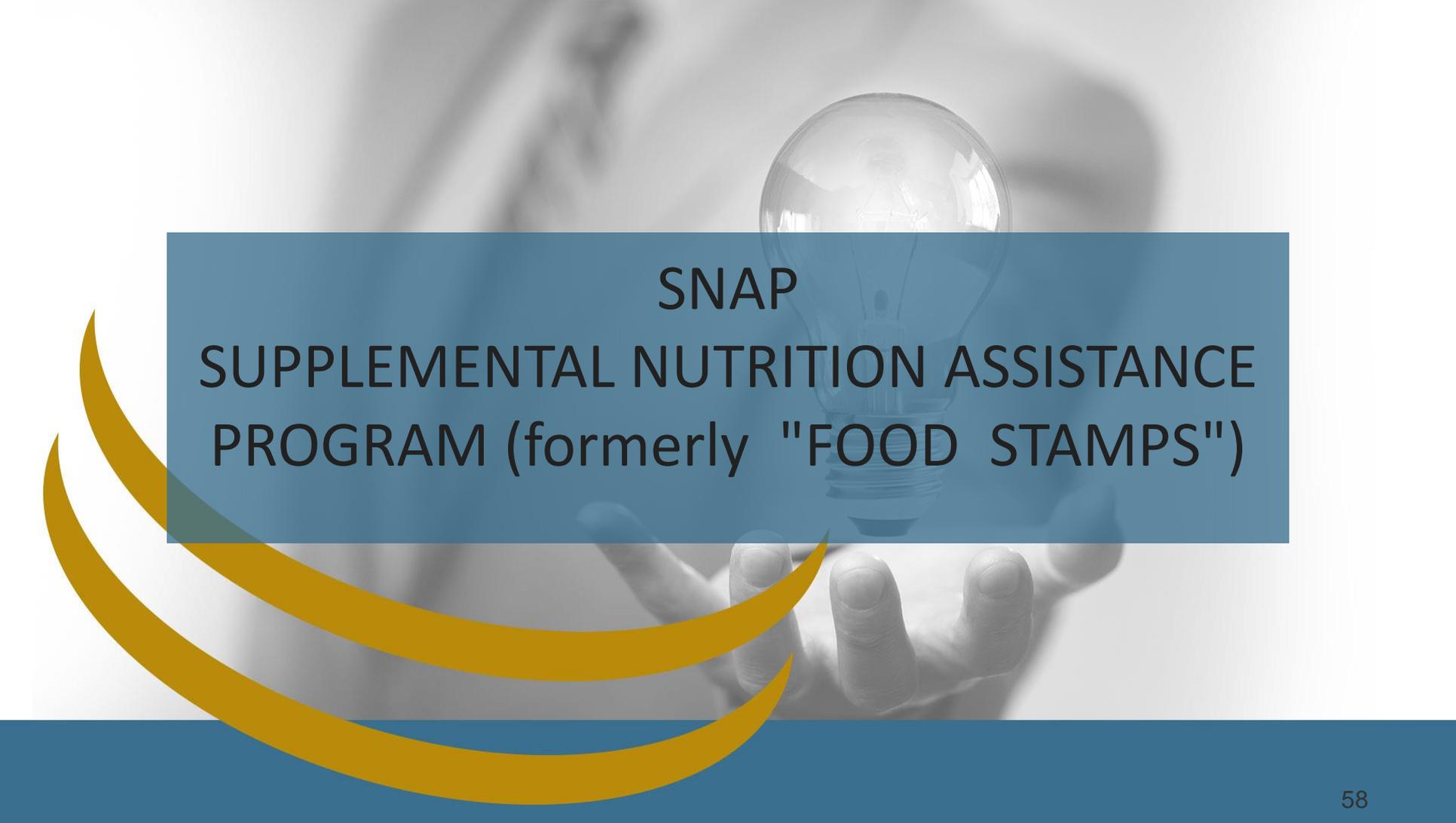
- Belinda's parents want to make sure that if they pass away before Belinda that they can continue to contribute to her housing needs
- Belinda's parents establish an estate planning special needs trust and direct the trust to continue to contribute to the ABLE account annually an amount necessary to pay the ISM amounts.

August is ABLE to Save Month

- Week #1: The Promise and Future of ABLE Accounts
 - Week #2: ABLE Accounts and Social Security Beneficiaries
 - Week #3: Perspectives on ABLE Accounts and SNT
 - Week #4: ABLE and Employment Success
- Provided by the ABLE National Resource Center (ABLE NRC)



GET MORE
INFORMATION:
[ablenrc.org/abletosave-
campaign-2020](https://ablenrc.org/abletosave-campaign-2020)

A grayscale background image of a person's hands holding a glowing lightbulb. The lightbulb is the central focus, emitting a soft glow. The person's hands are visible, with fingers slightly curled around the base of the bulb. The overall tone is hopeful and innovative.

SNAP
SUPPLEMENTAL NUTRITION ASSISTANCE
PROGRAM (formerly "FOOD STAMPS")

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (formerly "FOOD STAMPS")

- The Supplemental Nutrition Assistance Program (SNAP) provides help for low-income households to buy the food needed for good health.
- If you receive SSI, you may be eligible to receive SNAP assistance to purchase food.
- In some States, the SSI application is also an application for SNAP if the individual lives alone.

SNAP Income Requirements

- Most households must meet both gross and net income limits to qualify for SNAP benefits.
- “Gross income” is your total income before taxes or any other deductions.
- There are certain things you can deduct from your gross income such as housing costs, child-support payments, and child or dependent care payments.

SNAP Income Requirements

- The amount left over after deductions are taken out of your gross income is called your “net income.”
- A household with an elderly person or a person receiving disability payments only has to meet the net income test.

SNAP for the Disabled or Elderly

- You or other household members who are age 60 or older, or receiving certain disability payments, can also deduct monthly out-of-pocket medical expenses over \$35 from the household income.
- Expenses cannot be deducted if an insurance company or someone who is not a household member pays for them.

SNAP Eligibility

- Households are considered income-eligible if everyone in the household receives Supplemental Security Income (SSI) or Temporary Assistance for Needy Families (TANF).
- Income limits vary by household size and may change each year.

Resources

www.disabilitybenefits101.org
www.specialneedsalliance.org

Disability Benefits 101

working with a disability

Disability Benefits 101 gives you tools and information on employment, health coverage, and benefits. You can plan ahead and learn how work and benefits go together.

Alaska

Always go to Alaska

Arizona

Always go to Arizona

California

Always go to California

Kentucky

Always go to Kentucky

Michigan

Always go to Michigan

Minnesota

Always go to Minnesota

Missouri

Always go to Missouri

New Jersey

Always go to New Jersey

Ohio

Always go to Ohio



Special Needs Alliance

www.specialneedsalliance.org



[FIND AN ATTORNEY](#)

[SPECIAL NEEDS 101](#)

[INFORMATION CENTER](#)

[ABOUT US](#)

WE ARE A NATIONAL ALLIANCE OF
ATTORNEYS FOR SPECIAL NEEDS
PLANNING

Maximize &
Preserve Benefits

Protect
Assets

Assure
Lifelong Care

USE OUR DIRECTORY TO FIND YOUR ATTORNEY

[FIND AN ATTORNEY](#)

[INFORMATION CENTER](#)

For copies of the presentation
go to www.dalelawfirm.com
click on event resources

