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OPTIONS FOR ACHIEVING MEDICAID ELIGIBILITY FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

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The Importance of Maintaining Medicaid Eligibility

The New Jersey Division of Developmental Disabilities (“DDD”) is changing the way it is doing business. Under DDD’s new eligibility rules, services will only be provided to individuals age 21 years old and older who are eligible for DDD and Medicaid. (For a comprehensive explanation of DDD’s new eligibility rules, visit our website at www.hinkle1.com). These rules require individuals to maintain Medicaid eligibility; any loss of eligibility can result in the interruption or termination of services. Therefore, it is vital for families of an individual with a disability to make sure they preserve Medicaid eligibility by ensuring family members keep assets and income below certain limits, spend down excess assets, or create a special needs trust. Each of these methods will be discussed below. Now more than ever, it is imperative individuals, parents and guardians understand the Medicaid programs available and take the steps necessary to become and maintain eligibility.

Below is a brief explanation of some ways an individual can be Medicaid eligible:

Supplemental Security Income (“SSI”)

SSI provides monthly cash payments to individuals in need. In New Jersey, individuals determined eligible for SSI are also eligible for Medicaid. The criteria for SSI eligibility are:

- An individual who is at least 65 old, or blind, or disabled;
 - The Social Security Administration defines being disabled as the inability to engage in substantial gainful activity (“SGA”). Currently, SGA is the ability to earn more than \$1010 per month. The SGA amount has not yet been updated for 2013.
- Has limited income (currently \$729.25 per month); and
- Resources of not more than \$2,000 from all sources combined.

Most individuals with disabilities qualify for SSI at age 18 and, therefore, receive Medicaid under this program.

Disabled Adult Child Status (“DAC”)

An individual with a disability is sometimes eligible for Social Security benefits based on the work history of their parent. This usually happens when a parent begins collecting his or her own Social Security benefits. Often, the amount provided to the individual with a disability is above the income limit for SSI, therefore, the individual loses both SSI and Medicaid benefits.

In some instances the individual with a disability may be eligible for continued Medicaid benefits as a Disabled Adult Child (“DAC”). The criteria for being considered a DAC are as follows:

- The individual with a disability is at least 18 years old;
- The disability manifested before age 22;
- The individual has been receiving SSI due to his or her own disability; and
- Individual lost benefits because he or she starts receiving Social Security benefits on the work history of their parent or due to an increase in those benefits.

It is important to understand that DAC status protects the individual with a disability from losing Medicaid Benefits based on having income over the allowable limit; however, it does not waive the resource limitation. Therefore, resources need to remain below \$2,000.

Community Medicaid

This program provides Medicaid to individuals unable to afford the health care they need. The criteria for eligibility in this program are:

- The individual is at least 65 years old or is blind or disabled;
- Resident of New Jersey;
- Has limited income (currently \$931 per month)
- Resources of not more than \$4,000.

This program is available to individuals with a disability that are unable to qualify for SSI or unable to qualify for Medicaid as a DAC.

New Jersey Workability

This program offers full New Jersey Medicaid health coverage to individuals with disabilities who are working. The individual is charged a small premium under this program. The criteria for eligibility in this program are:

- Individual is between the ages of 16 and 64;
- Working either full or part time;
- Determined to be disabled by either the Social Security Administration or The State of New Jersey;
- Earned no more than \$56,652 per year;

- Has unearned income no more than \$931 per month; and
- Has less than \$20,000 in liquid assets (excluded from assets are Social Security Disability Benefits, Railroad Retirement System Benefits (based on the individuals account), qualified retirement accounts, the value of a home and car.

What if the individual with a disability has resources above the allowable limit?

The resource limit is a cap on assets owned by the individual with a disability. This includes bank accounts, Uniform Gift to Minors Act (“UGMA”) or Uniform Trust to Minors Act (“UTMA”) accounts, stocks, bonds, or qualified retirement accounts (with the exception for the NJ Workability Program).

In these instances the excess resources can be spent for the individual’s needs, so long as, the items purchased are for Fair Market Value (“FMV”). This is often referred to as “spending down” resources. Examples can include reimbursement of expenses paid by others, extra therapies, personal items, some forms of necessities, trips or vacations, and similar items. For instance, some families incur significant expenses providing therapies for an individual with a disability, such as ABA, PT, OT, and SLT. Spending down resources includes reimbursing family members for these expenses.

However, spending down resources cannot be achieved by simply giving away funds to family members or transferring funds to other accounts. An individual with a disability will incur penalties and periods of ineligibility if funds are handled incorrectly. Careful thought should be given when planning to engage in a spend down of the individual’s assets. If you are unsure about how to go about this, consult a professional. The effort be worthwhile in order to avoid disastrous results.

Where the assets are substantial or the individual’s needs are already being met, the assets can be placed in a Special Needs Trust (“SNT”). In most cases, because the assets belong to the individual seeking to establish or maintain Medicaid eligibility, the trust is required to have a “payback” provision. This provision requires that the State Medicaid agency is repaid upon the death of the individual with a disability from the assets remaining in the trust up to the amount that was spent by Medicaid for care during the individual’s lifetime. This type of trust is sometimes referred to as a “payback” trust.

The Importance of Advanced Planning

Finally, it is vital for families of an individual with a disability to create an estate plan which includes a SNT. When a family plans ahead in this manner, the type of SNT created does not require a “payback” provision because the trust will be funded with assets belonging to the parents or other family members. This type of SNT is commonly referred to as a “third party” SNT. Absent proper estate planning, when the parents of the individual with a disability die; the individual may inherit assets that would jeopardize Medicaid eligibility. For more information on this topic, please visit our website at www.hinkle1.com/category/estate_planning/.