

Support for a non-minor child with a disability. (750 ILCS 5/513.5)

Sec. 513.5. Support for a non-minor child with a disability.

(a) The court **may award** sums of money out of the property and income of either or both parties or the estate of a deceased parent, as equity may require, for the **support of a child of the parties who has attained majority when the child is mentally or physically disabled and not otherwise emancipated**. The sums awarded may be paid to one of the parents, to a trust created by the parties for the benefit of the non-minor child with a disability, or **irrevocably to a special needs trust, established by the parties and for the sole benefit of the non-minor child with a disability, pursuant to subdivisions (d)(4)(A) or (d)(4)(C) of 42 U.S.C. 1396p, Section 1213 of the Illinois Trust Code, and applicable provisions of the Social Security Administration Program Operating Manual System**. An application for support for a non-minor disabled child may be made before or after the child has attained majority. Unless an application for educational expenses is made for a mentally or physically disabled child under Section 513, the disability that is the basis for the application for support must have arisen while the child was eligible for support under Section 505 or 513 of this Act.

(b) In making awards under this Section, or pursuant to a petition or motion to decrease, modify, or terminate any such award, **the court shall consider** all relevant factors that appear reasonable and necessary, including:

- (1) the present and future financial resources of both parties to meet their needs, including, but not limited to, savings for retirement;
- (2) the standard of living the child would have enjoyed had the marriage not been dissolved. The court may consider factors that are just and equitable;
- (3) the financial resources of the child; and

(4) **any financial or other resource provided to or for the child including, but not limited to, any Supplemental Security Income, any home-based support provided pursuant to the Home-Based Support Services Law for Mentally Disabled Adults, and any other State, federal, or local benefit available to the non-minor disabled child.**

(c) As used in this Section:

A "disabled" individual means an individual who has a physical or mental impairment that substantially limits a major life activity, has a record of such an impairment, or is regarded as having such an impairment.

"Disability" means a mental or physical impairment that substantially limits a major life activity.

(Source: P.A. 101-48, eff. 1-1-20.)

Child support payments that are required to be paid by a parent in accordance with 750 ILCS 5/513.5 by Court order, may result in a reduction or the complete elimination of a child's SSI (Supplemental Security Income) benefit as well as the child's Medicaid, which provides the child's medical coverage, therapy, employment support, and home or residential support services needed for the appropriate support for that child with special needs. Because many programs for individuals with special needs are only available to individuals who have Medicaid eligibility, preserving this eligibility does more than just keep medical coverage in place. Therefore, the child support that was intended to benefit the child may, without proper planning, result in unintended, detrimental consequences. For a child age 18 or older one hundred percent (100%) minus \$20.00 of the child support payments ordered by Court, count as a reduction against SSI (see Social Security Administration's POMS SI 00830.420 C.1.). However, Government benefits can be protected if the court order directs that child support payments are to be made to a "special version" of a Special Needs Trust for the sole benefit of that child, known as a self-settled special needs trust (also known as a 1st party, "pay-back", OBRA, d4A, or d4C special needs trust). Support payments to such a special needs trust do not displace SSI, nor jeopardize Medicaid and Medicaid Waiver programs, greatly benefitting both parents and the child. The Social Security Administration's Supplemental Security Income "rules" (POMS) provides the following example:

"A disabled SSI recipient over age 18 receives child support which is assigned by court order directly into the trust. Since the child support is the SSI recipient's income, the recipient is the grantor of the trust and the trust is a resource unless it meets an exception in SSI 01120.203. If the trust meets an exception and is not a resource, the child support is income unless it is irrevocably assigned to the trust, per SSI 01120.201 J.1.d. In this example, the court ordered the child support to be paid directly into the trust, so we consider it to be irrevocably assigned to the trust."

The relevant provision added in January 2009 to Social Security Administration's POMS (Program Operating Manual System) at SI 01120.200G1d requiring 1st party Special Needs Trusts for this purpose, provides: "A legally assignable payment that is assigned to a trust is income for SSI purposes unless the assignment is irrevocable. For example, child support paid directly to a trust as a result of a court order, are not income." **NOTE: CANNOT USE AN ABLE ACCOUNT PER SSA!**

Again, for a child age 18 or older, one hundred percent (100%) minus \$20.00 of the child support payment counts as a reduction against SSI (see POMS SI 00830.420 C.1.); unless the court order provides that such support be paid irrevocably to an appropriate special needs trust.

The required language for the court order is:

"In accordance with 750 ILCS 5/513.5, all sums awarded as child support for _____ (the name of the child with special needs) shall be paid, irrevocably, to an irrevocable special needs trust, established by the parties, and for the sole benefit of the non-minor child with a disability, pursuant to subdivisions (d)(4)(A) or (d)(4)(C) of 42 U.S.C. 1396p, and Illinois Compiled Statutes, Chapter 760 (Illinois Trust Code), Section 3/509."