



Guardianship & Alternatives, Disability Benefits, and Special Needs Trusts

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When Your Child Turns 18

Decision Making Rights - transfer from you to your child

- Legal presumption of capacity
- Medical & Dental care
- Education
 - Receive notice of and attend IEP meetings
 - Consent to reevaluation
 - Consent to change of placement

Eligibility for Disability Benefits

- SSI
- Medicaid

Countable Resource Limits – to maintain eligibility

Incapacitated Person - Definition

An adult - who is incapable of:

- Receiving and evaluating information effectively
or
- Responding to people, events, or environments

To such an extent that - he or she lacks the capacity to:

- Meet essential requirements for health, care, safety, or therapeutic needs
- Manage property or financial affairs without assistance

Poor judgment alone - shall not be considered sufficient evidence ¹

¹ Excerpts from Va. Code § 64.2-2000.

Guardianship in Virginia

Guardianship – over the person

- Where to live & medical decisions
- Lose right to own firearm, marry, drive, vote
- May be limited
- Rights to drive and vote may be retained
- Rights can be restored
- Standby guardians can be appointed

Conservatorship – over finances

- Pay bills, open accounts
- Protect from bad influences
- Typically not needed – as Representative Payee, you will control income
- Annual/triennial accounts to Commissioner of Accounts

Both are court proceedings - can be combined

Guardian / Conservator - supervised by court

Alternatives to Guardianship

Durable Power of Attorney (finances and contracts)

- Adult-child with capacity to sign a power of attorney
 - Capacity here = understanding the power he or she is giving to his or her Agent
- Gives family member the authority to act as his or her Agent
- Takes away no rights from your adult-child

Advance Directive for Healthcare (medical decisions)

- Includes medical power of attorney and HIPAA release
- Not as certain as guardianship

Power of Attorney for Education (educational decisions)

- Agent can help make decisions at IEP meetings

Representative Payee

- For SSI / SSDI payments

Questions?

Disability Benefits

Income:

1. Supplemental Security Income (SSI)
2. Social Security Disability Insurance (SSDI)
3. Childhood Disability Benefits (CDB)

Healthcare:

1. Medicare
2. Medicaid

Supplemental Security Income (SSI)

- Federal benefit for persons that are disabled, blind or age 65 +
- Income limit = \$1,470 per month (2023)*
 - *work incentives allow someone to make more \$\$ and retain SSI eligibility (even if no payment), Medicaid and Medicaid waiver services
- Countable resource limit = \$2,000
- Parental “deeming” of income and assets ends at age 18
- Max benefit of \$914 per month (2023)
- Meant to pay for room and board
 - Charge rent to avoid 1/3 SSI reduction
- Earned income reduces SSI but work incentives apply to reduce effect
 - ALWAYS make more money with SSI and work!
- Unearned income reduces SSI on a \$ for \$ basis

Note: Although SSI is administered by the Social Security Administration, it is **not** part of the Social Security Act. Funding for SSI comes from the annual federal budget.

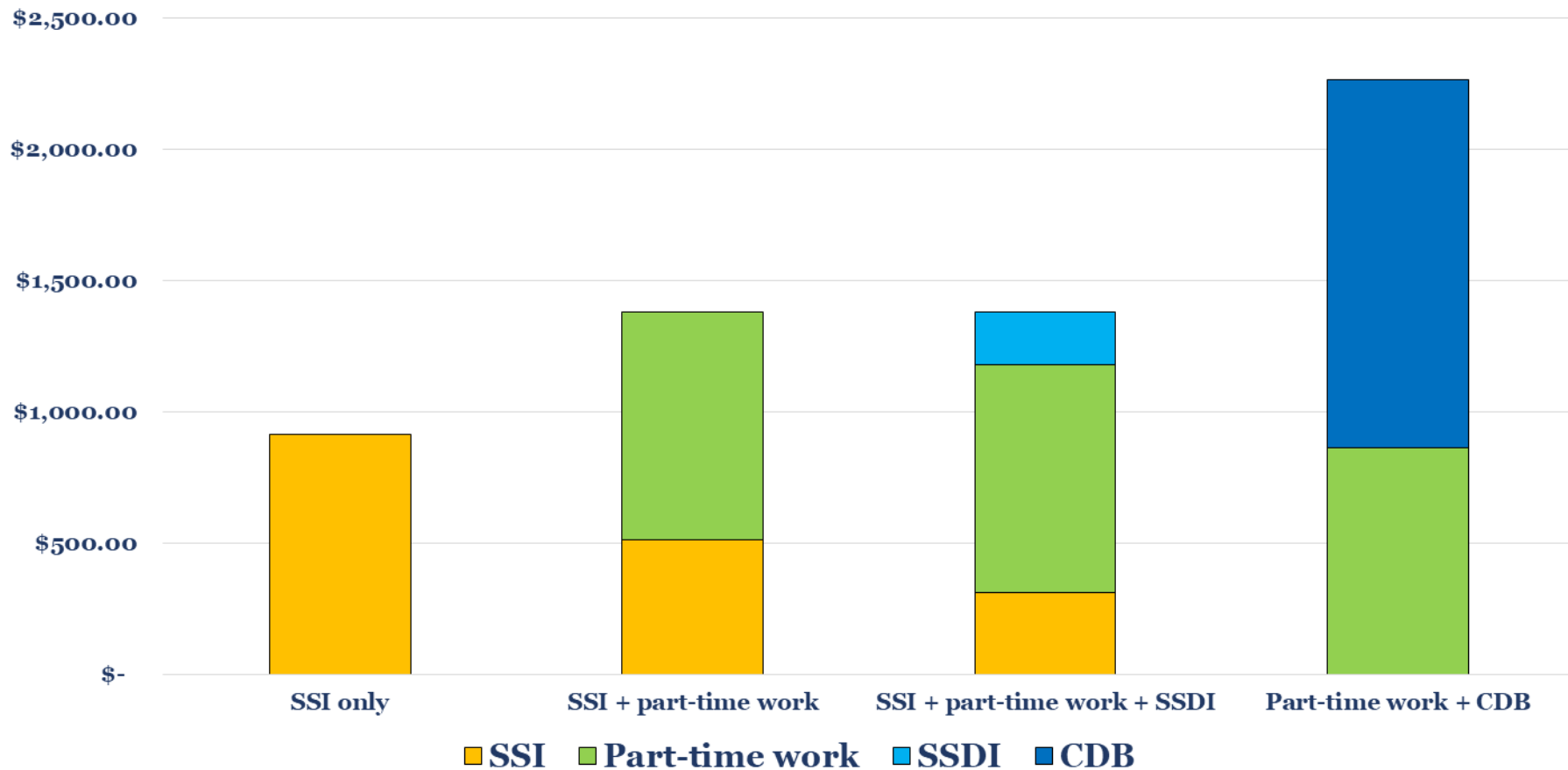
Social Security Disability Insurance (SSDI)

- Same disability requirements as SSI
- Have to be working and paying payroll taxes
- Eligibility based on work history and credits
 - Persons disabled before age 24 may qualify with 6 credits earned in a 3-year period
- Automatic enrollment but you may want to ask SSA caseworker after a couple years of part-time work
- Considered to be unearned income for SSI - reduces SSI on a \$ for \$ basis
 - So there is NO net increase in income
 - But SSDI has a more reliable funding stream
 - And it comes with Medicare (see slide 14)

Childhood Disability Benefit (CDB)

- Adult-child can draw disability benefit off of a ***parent's*** work record if he or she:
 - Was disabled before the age of 22; and
 - Is unmarried
- Eligibility starts when the parent:
 - Retires and draws social security;
 - Becomes disabled and draws SSDI; or
 - Passes away
- Considered to be unearned income for SSI – typically wipes out SSI
 - But total income increases

Income Sources Over Time (for adult children with disabilities)



Questions?

Medicaid

- Joint federal and state program that helps pay for medical care for persons that are disabled, blind or age 65+
- Administered by the states
- Income limits vary by state
- Countable resource limit of **\$2,000**
- 5 year look back period for transfers for less than full market value
- Considered disabled if receiving SSI or SSDI
- Always payor of last resort

Note: Medicaid pays for long-term nursing care; Medicare does not

Medicare

- Federal health insurance program for people age 65+ and younger persons with disabilities
- Disabled adult-child will become eligible after receiving SSDI for 2 years
 - Or when he or she becomes eligible for Childhood Disability Benefits off of your work record
- Medicare will likely be your adult-child's primary long-term medical insurance

Note: When your adult-child becomes eligible for Medicare, he or she ***must*** accept Part A (free) and Part B (monthly premium) coverage.

1. Private insurance → 2. Medicare → 3. Medicaid

Questions?

Third-Party Special Needs Trust (3P-SNT)

- Created by a family member with *family* members' money
- Assets in a 3P-SNT do not count as resources for SSI, Medicaid and Medicaid waiver eligibility
- Typically empty until you pass away
 - Funded by your Wills and beneficiary designations on life insurance, IRAs and brokerage accounts, etc.
- Successor Trustees manage assets and use them to supplement disability benefits and improve your son or daughter's quality of life
- 3P-SNTs can own real estate and vehicles
- NO payback clause
 - Assets left in the trust when the beneficiary passes go to family



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