

NJ Supreme Court, Congress Clarify Rules re: Special Needs Trusts

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More than 43 million Americans live with physical or mental disabilities. Many of these individuals are unable to advocate for themselves. Attorneys can assist in lifetime planning for the individual with special needs, advocate for them, and bring peace of mind to the parents and other relatives of these individuals.

Special needs trusts (also called "supplemental needs trusts" and "d4A trusts") are a useful tool that allows the parents and caregivers of a special needs individual to save for the individual's future. It permits transfer of assets and income without jeopardizing the special needs individual's ability to receive government benefits, such as SSI and Medicaid.

Military personnel and public employees, such as police and firefighters, have earned pension benefits that provide for their spouses and families upon their deaths. Until recently, however, it was unclear whether those benefits could be transferred to a trust for a disabled survivor. Strict statutory language appeared to prohibit payment other than directly to the survivor. Two recent actions, one a New Jersey Supreme Court decision, the other a change in federal law, have resolved this issue in favor of disabled beneficiaries.

The 'Saccone' Case

In a decision handed down on Sept. 11, 2014, the New Jersey Supreme Court ruled that the disabled child of a retired member of the Police and Firemen's Retirement System (PFRS) may have his or her survivors' benefits paid into a first-party special needs trust (SNT) created for him or her under 42 U.S.C. § 1396p(d)(4)(A) [hence the name "d4A trust"]. *Saccone v. Board of Trustees*, 219 N.J. 369 (2014).

The Issue

Thomas Saccone is a retired Newark firefighter and a member of the PFRS. As a retired PFRS member, Saccone receives a pension and other benefits. His wife and son are entitled to receive pension death benefits, or "survivors' benefits," if Saccone predeceases them. Following his death, those benefits would be awarded directly to Saccone's wife and son without passing through Saccone's probate estate.

Saccone's son, Anthony, has a severe mental disability and receives public assistance, which is available only to individuals with incomes below a specified amount. Fearing that Anthony's share of the survivors' benefits would disqualify him from receiving public assistance, Saccone

wanted to ensure that the PFRS survivors' benefits for Anthony would be paid to the "Anthony J. Saccone Supplemental Benefits Trust." Since assets held in an SNT are not counted as income for the purpose of many public assistance programs, Saccone believed that paying the survivors' benefit to the trust would allow Anthony to receive those benefits without jeopardizing his eligibility for public assistance.

Procedural History

In 2008, Saccone's attorney contacted the Division of Pension and Benefits, seeking reassignment of the survivors' benefits from Anthony as an individual to an SNT in Anthony's name. The division denied the request, stating that the plain language of N.J.S.A. 43:16A-12.1(a) precluded him from changing the beneficiary of his survivors' benefit. Saccone filed an administrative appeal with the PFRS Board of Trustees, seeking to overturn the division's decision. The board refused to entertain Saccone's request because Saccone was still alive and, therefore, any decision relating to the assignment of Saccone's survivors' benefits would be an advisory opinion. The Appellate Division affirmed. In 2011, the Supreme Court granted Saccone's petition for certification, summarily reversed, and remanded the case to the board for a decision on the merits. *Saccone v. Board of Trustees, Police & Firemen's Retirement System*, 212 N.J. 564, 564-65 (2011).

On remand, the board rejected Saccone's claim on the merits, finding that the statutory framework did not permit Saccone to designate a trust as the beneficiary of his survivors' benefits. On appeal, the Appellate Division affirmed the board's administrative determination, concluding that the legislature had purposefully eliminated a PFRS member's ability to assign a trust as a beneficiary. The panel further noted that Saccone could not fund an SNT with Anthony's share of survivors' benefits because those benefits belong to Anthony. The Supreme Court again granted certification. 213 N.J. 387 (2013).

Supreme Court Decision

In a 4-2 decision, the court reversed. The court found that upon the death of a PFRS member, two benefits become payable to the member's surviving beneficiaries: a monthly survivors' pension benefit payable to the PFRS member's surviving spouse and children pursuant to N.J.S.A. 43:16A-12.1(a), and a group life insurance benefit pursuant to N.J.S.A. 43:16A-59. In creating these automatic death benefits payable to the member's surviving spouse and children, *the legislature eliminated a member's ability to name other beneficiaries.*

However, although a PFRS member is not free to designate any beneficiary he or she chooses, it does not necessarily follow that the language of the statute forecloses the possibility of designating a trust for the benefit of one of the statutorily designated beneficiaries, the court held, particularly given the strong public policy favoring the protection of a public employee's family. The court ruled that the trust stands in the place of the disabled beneficiary, and the assets held by the trust do not count as income for public assistance purposes. Upon the death of the beneficiary, Medicaid would be reimbursed from any remaining assets in the trust up to the total amount spent on the beneficiary's medical care.

The court found that the board acted arbitrarily, capriciously and unreasonably in refusing to consider an SNT as Anthony's proposed equivalent. The court ruled that paying Anthony's share of survivors' benefits to an SNT that was established for his sole benefit, is equivalent to paying those benefits to Anthony himself. This protects Anthony's financial interest and furthers the legislature's public policies in favor of both SNTs and survivors' benefits. The court found that there was no compelling reason to conclude that the legislature meant, by its silence, to prohibit the use of a self-settled SNT created pursuant to 42 U.S.C. §1396p(d)(4)(A).

The Supreme Court eschewed the board's and the Appellate Division's strict construction of the survivors' benefits statute. Such a construction does a disservice to the very people it was intended to help, and serves no legitimate public policy, said the court. The court found that the reference to "child" in N.J.S.A. 43:16A-12.1(a) must include a first-party SNT established for a disabled child, such as Anthony. The board erred in not accommodating Saccone's request to reform the manner in which Anthony would receive any future survivors' benefits by having the survivors' benefits be paid into a first-party SNT for Anthony.

Congressional Action

At the same time that the *Saccone* case was wending its course through the New Jersey court system, Congress was considering a bill to change the law related to disabled children of military personnel. On March 29, 2012, several Congressmen, including former NJ Rep. Steve Rothman (9th Dist.), introduced the "Disabled Military Child Protection Act," to amend 10 U.S.C. §1450(a), to provide for the payment of monthly annuities under a survivor benefit plan to a supplemental or special needs trust established for the sole benefit of a disabled dependent child of a military retiree. On May 23, 2013, former Sen. Kay Hagan (NC), introduced a companion bill in the Senate. In 2014, Sen. Kirsten Gillebrand (NY) incorporated the language of the bill into the "National Defense Authorization Act of 2015" (H.R. 3979), where it was approved by the Senate Armed Services Committee. Rep. Jim Moran (VA) followed suit in the House of Representatives.

The Issue

Federal law provided survivor benefits to go directly to the child of a deceased veteran, but did not permit them to be paid into a trust. Payment directly to a disabled child after the death of the military retiree would be counted as income for Medicaid and SSI purposes, and could make the disabled beneficiary ineligible for these benefits. The bill would allow military personnel to invest a portion of their retirement pay into a survivor benefit plan (SBP), which, upon their death, could be placed into a special needs trust for a disabled child.

Action

On Dec. 12, 2014, the much broader Defense Authorization Act was passed by both houses. The disabled child protection provisions were included as Section 624. President Obama signed the bill into law as P.L. 113-291 on Dec. 19, 2014.

Conclusion

The N.J. Supreme Court's decision in the *Saccone* case, along with the enactment of the disabled military child protection provisions in the 2015 Defense Reauthorization Act, provide attorneys with a valuable tool to assist the disabled dependents of police, firefighters and military personnel. •

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