

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2397 (Maienschein)
Version: May 24, 2024
Hearing Date: June 4, 2024
Fiscal: No
Urgency: No
AWM

SUBJECT

Child support: special needs trusts

DIGEST

This bill clarifies that a family court may order a support payment for a child of any age who is incapacitated and unable to earn a living and without sufficient means to be paid into a special needs fund, as defined.

EXECUTIVE SUMMARY

Federal law establishes a number of benefits programs for persons who are unable to perform substantial work due to a physical and/or mental condition, including Supplemental Security Income (SSI). A person's eligibility for SSI eligibility is based on their income and resources; persons with income and resources above a set ceiling are not eligible for SSI. Under current federal law and regulations, two-thirds of child support paid by a parent to support a disabled minor child, and the full amount of child support paid to support a disabled adult child, is counted as income that can render the disabled adult ineligible for SSI or reduce their SSI payments. Federal law establishes an exemption, however, for a disabled individual's assets held in a special needs trust established for the benefit of a disabled individual, provided that the trust meets certain criteria.

According to the author and sponsor of this bill, many courts in the state already order child support payments for disabled children and adults to be paid into special needs trusts to prevent child support payments from reducing the child's SSI eligibility. Some courts, however, have expressed uncertainty about whether they have that authority in the absence of an explicit authorizing statute. This bill provides that explicit authorization, thereby clarifying that courts may order payment of child support into a special needs trust that satisfies specified state and federal requirements.

This bill is sponsored by the Arc & United Cerebral Palsy California Collaboration and is supported by the California Judges Association, Educate.Advocate, Families for Early Autism Treatment, and the Family Law Section of the Los Angeles Bar Association. The Committee has not received timely opposition to this bill.

PROPOSED CHANGES TO THE LAW

Existing state law, regulations, and Rules of Court:

- 1) Provide that a child's parents have an equal responsibility to maintain, to the extent of their ability, a child of whatever age who is incapacitated from earning a living and without sufficient means. (Family Code, § 3910.)
- 2) Provide that, if a parent has the duty for the support of the parent's child and willfully fails to so provide, the other parent, or the child by a guardian ad litem, may bring an action in the family court of appropriate jurisdiction against the parent to enforce the duty. (Fam. Code, § 4000.)
- 3) Establish procedures for assessing the need for, determining the amount of, and collecting court-ordered child support. (Fam. Code, pt. 2, ch. 2, §§ 4000 et seq.)
- 4) Provide that a conservator of the person may be appointed for a person who is unable to provide properly for their personal needs for physical health, food, clothing, or shelter; and a conservator of the estate may be appointed for a person who is substantially unable to manage their own financial resources or resist fraud or undue influence. A conservator of the person and estate may be appointed if both sets of criteria are met. (Prob. Code, § 1801(a)-(c).)
- 5) Provide for the establishment of a special needs trust when a payment has been made to an adult with a disability in a conservatorship, or for whom a conservatorship is appropriate, in connection with a money judgment or offer to compromise, as specified. The special needs trust shall be subject to the continuing jurisdiction of the probate court, as specified. (Prob. Code, § 3604.)
- 6) Establish continuing court jurisdiction over a trust created, or funded, by a court order pursuant to the Probate Code, and impose specified restrictions on the trust instruments, including heightened reporting and court approval requirements for trust instruments for trusts that will have total assets of \$20,000 or less after receipt of the property ordered by the court. (Cal. Rules of Court, rule 7.903.)

Existing federal law and regulations:

- 1) Count, for purposes of determining whether a person is eligible for, and the amount of, SSI payments, the person's earned and unearned income, as defined. (42 U.S.C. 1382a(a)(2).)
 - a) "Unearned income" includes support payments that are cash or in-kind contributions to meet some or all of a person's needs for food or shelter, made voluntarily or by court order. (20 C.F.R. § 416.1121(b).)
 - b) When a parent receives current child support payments for a minor child, two-thirds of the support payment is treated as income for purposes of calculating SSI benefits. (Social Security Administration, Program Operations Manual System (POMS) SI 00830.420 (eff. 12/11/23).)
 - c) When a parent receives current support payments for an adult child after the child reaches age of majority, the support payments are counted as income to the adult child even if they do not live with or receive any of the child support payments. (Social Security Administration, Program Operations Manual System (POMS) SI 00830.420 (eff. 12/11/23).)
- 2) Provide that trusts that contain the assets of an individual who is under the age of 65 years and that meet specified criteria, are not treated as the individual's available resources for purposes of determining a person's eligibility for, and their entitled amount of, certain public benefits, including SSI. (42 U.S.C. § 1396p(d)(4)(A), (C).)
 - a) A person is "disabled" if they are unable to engage in any substantial gainful activity by reason of any medically determinable or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not fewer than twelve months. (42 U.S.C. § 1382c(a)(3).)

This bill:

- 1) Permits a family court ordering a support payment for a child who is incapacitated from earning a living and without sufficient means to order that the support be paid to a special needs trust.
- 2) Provides that a "special needs trust," for purposes of 1), means a trust that meets the requirements of section 1396p(d)(4)(A) or (C) of Title 42 of the United States Code and paragraphs (3) or (4) of subdivision (a) of section 50489.9 of Title 22 of the California Code of Regulations.
- 3) Makes technical and nonsubstantive conforming changes.

COMMENTS

1. Author's comment

According to the author:

Assembly Bill 2397 is a simple clarifying measure that gives the courts explicit authority to assign child support for children with disabilities to a special needs trust so that they do not risk losing their social security benefits. Absent this authority, a child who receives child support is at risk of having that "income" counted against them when determining eligibility for SSI benefits that are critical in assisting persons with disabilities.

2. This bill clarifies that a court may order a parent obligated to pay support for a child with special needs to pay the support into a special needs trust

California law requires a parent to support, to the extent they are able, a child of any age who is incapacitated from earning a living and who does not have sufficient means to support themselves.¹ In cases where the child's parents are divorced or separated, a court can order one parent to pay child support to the other parent for the maintenance of their disabled child, whether the child is a minor or an adult.²

Federal law establishes a number of benefits programs for persons who are unable to perform substantial work due to a physical and/or mental condition, including SSI.³ A person's eligibility for SSI eligibility is based on their income and resources; persons with income and resources above a set ceiling are not eligible for SSI.⁴ Under current federal law and regulations, two-thirds of child support paid by a parent to support a disabled minor child, and the full amount of child support paid to support a disabled adult child, is counted as income when calculating an individual's SSI eligibility.⁵ As a practical matter, this means that a parent's payment of child support can cancel out a disabled adult's SSI benefits.⁶

Federal law establishes an exception to this general rule, by exempting from the calculation of "income" a disabled individual's assets held in a special needs trust established for the benefit of the disabled individual.⁷ To qualify for this exemption, the special needs trust must meet certain criteria, including providing that any trust assets

¹ Fam. Code, § 3910.

² *Id.*, §§ 4000, 4001.

³ *See* 42 U.S.C. §§ 1381-1383f.

⁴ *Id.*, §§ 1381a, 1382.

⁵ Social Security Administration, Program Operations Manual System (POMS) SI 00830.420 (eff. 12/11/23).

⁶ 20 C.F.R. §§ 416.1211, 416.1124.

⁷ 42 U.S.C. § 1396p(d)(2).

remaining in the trust upon the beneficiary's death be paid to the state.⁸ According to the author and sponsor, many courts in the state already order child support payments for disabled children and adults to be paid into special needs trusts, so as to prevent child support payments from reducing the child's SSI eligibility. Some courts, however, have expressed uncertainty about whether they have the authority to make such an order in the absence of an explicit authorizing statute.

3. This bill clarifies that a court may order a parent's child support payments for a disabled child be paid to a special needs trust

This bill clarifies that a family court, when making an order of child support for a child who is incapacitated from earning a living and without sufficient means, may order that the parent pay the support funds into a special needs trust. The bill specifies that the special needs trust must comply with the relevant federal statutes that will exempt the trust's assets from the calculation of income for purposes of SSI eligibility, as well as relevant California regulations.

4. Arguments in support

According to the California Judges Association:

SSI is a means-tested program, meaning benefits may be denied or reduced based on the beneficiaries' assets. Minors or adult dependent children risk having their SSI and other benefits denied or reduced if they receive child support payments. To avoid these potential reductions, parents can create a special needs trust. While federal law permits child support payments to be made to a special needs trust, state law does not explicitly authorize courts to direct child support payments to such trusts.

AB 2397 aims to clarify that if a special needs trust exists for a minor or adult dependent child, child support payments can be directed to that trust. This bill is designed to prevent child support from jeopardizing eligibility for government benefits. However, the assessment of need and consideration of the benefits received would still be required.

SUPPORT

Arc & United Cerebral Palsy California Collaboration (sponsor)
California Judges Association
Educate.Advocate
Families for Early Autism Treatment
Family Law Section of the Los Angeles Bar Association

⁸ *Ibid.*

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.

PRIOR VOTES:

Assembly Floor (Ayes 75, Noes 0)
Assembly Judiciary Committee (Ayes 12, Noes 0)
