



Solving the Settlement Planning Puzzle: Considerations for a Recipient of Government Benefits

Mary, a personal injury attorney, spent almost two years litigating a medical malpractice case by which her client had suffered several strokes and lost the use of one hand. The hours spent with her client and his family, working on filings and negotiating with the defense seemed endless.

When the defense finally agreed on a settlement figure that would compensate her client for his injuries and provide for him well into the future, Mary was elated. However, when presenting the settlement figure to her client, Mary faced more complications – How would the settlement award affect her client’s receipt of Social Security Disability Insurance? What about his children who received healthcare through a Healthy Children’s program? What about the food assistance his family received monthly through the SNAP program?

Without working knowledge of government benefit programs and current agency decisions, Mary could not competently answer her client’s questions or confidently arrange for a settlement plan to protect his benefits. Mary needed help, and she needed it now.

Mary is not unlike many attorneys out there today – extremely competent and successful in litigating and negotiating her client’s claims, but lost when it comes to solving complex settlement planning issues. Mary’s client had a common planning issue – How was the receipt of settlement funds going to affect the government benefits that his family relied on? There are many factors that must be taken into account in order to create a successful settlement plan for a recipient of government benefits and each individual situation may come with unique challenges.

For example, Mary’s client receives Social Security Disability Insurance and is considered disabled, so he may be able to protect his benefits (and those of his family) by depositing his settlement funds into a pooled special needs trust account. But, Mary and her client do not know how the funds in a Pooled Special Needs Trust may be used, or if his settlement amount was too little to make the trust account worthwhile. Or, Mary’s client may decide to purchase a structured settlement annuity that would pay him a lump sum each month, but before doing so, Mary needs to calculate the exact amount he could receive per month without disqualifying him or his family for Medicaid and SNAP food assistance. And, what about a Medicare Set Aside? Mary’s client will be eligible for Medicare two years



after he begins receiving Social Security Disability Insurance, so does that mean he also needs a Medicare Set Aside to cover his injury-related care?

No matter what the final settlement plan ends up being for Mary's client, the choice must be an informed one and the options must track with her client's individual circumstances. Not every disabled client is suited for a special needs trust account and sometimes purchasing a structure without proper planning can cause a client to lose the benefits he or she depends on.

If a client receives or has the potential of receiving government benefits, it is imperative to explore settlement planning options that protect benefit eligibility. Not only is it an attorney's ethical obligation to present his or her client with the information necessary to make informed settlement planning decisions,¹ it is also the only way to protect the client from inadvertently losing his or her government benefits.

Don't be caught at the end of your case with a dangling settlement offer and a hesitant and uninformed client. It is never too early to create the **IDEAL** settlement plan:

I – Identify the benefits.

- Ask your client what government benefits he or she receives. Include this question on your firm's intake form. Make sure to differentiate between the different Social Security Benefits (i.e., Social Security Retirement, Social Security Disability Insurance and Supplemental Security Income) and between Medicaid and Medicare.
- Also ask if any of the client's family members or dependents receive government benefits. This may factor into the settlement plan choices available to the client.

D – Know the Difference Between Entitlement Benefits and Needs Based Benefits.

- There are two types of benefits – Entitlement Benefits and Needs-Based Benefits.
- Entitlement Benefits are based on an individual's work record and age and include benefits like Medicare, Social Security Retirement and Social Security Disability Insurance. Because these benefits are not based on financial eligibility tests, these benefits will not be affected by a client's receipt of settlement proceeds. However, please note that if a client receives Social Security Disability Insurance and/or Medicare, the attorney may still want to consider whether or not a Medicare Set Aside is required.
- Needs-Based Benefits are based on financial eligibility requirements and include benefits like Medicaid, SSI, SNAP and HUD.

¹ MODEL CODE OF PROF'L CONDUCT §1.4 (2012).



E - Start settlement planning EARLY!

- Although you may not have a deal on the table just yet, it is important to address these concerns early. The earlier you start figuring out the complications involved, the better you can understand what the client will need to get out of a settlement award. For example, if the client will have on-going care costs that may or may not be covered by his Medicaid program, the settlement will need to reflect that.
- Also keep in mind that even if the case does not settle and you win in court, the client's benefits may still be impacted when such judgment is paid.

A - Ask for help.

- Get the assistance that you and your client need by reaching out to a government benefit specialist or settlement consultant. Bringing in someone with expertise protects you and your client by making sure that the client makes informed and educated decisions regarding his or her settlement plan.

L - Limit the Risk.

- Proper planning ensures that you limit the risk that your client will lose his or her government benefits as a result of settlement distribution.
- Engaging a government benefit specialist protects the client, provides pertinent information and limits the risk of having an unhappy client.

For more information on settlement planning strategies, including government benefit eligibility issues, contact the Warner Ferris team. Visit www.warnerferris.com