

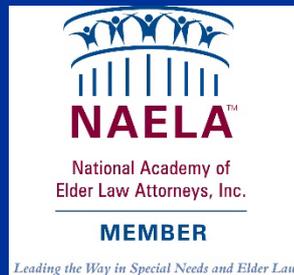
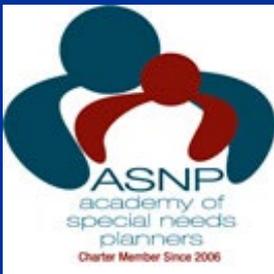


FALCON LAW GROUP
NOT YOUR TYPICAL LAWYERS!

**PROUD TO BE
STIGMA-FREE**

Planning for Tomorrow: The Person with Special Needs

Presented by:
Raymond J. Falcon, Jr., Esq.



Courtesy of:
Bergen County Special Services
CAPE Resource Center
March 12, 2025

© 2025 Raymond J Falcon Jr

What Does Planning Involve?

- Preserving financial security and quality of life
- Addressing key issues:
 - Understanding public benefits
 - Making decisions about the future
 - Providing for personal and financial protection
 - Using estate planning/trusts to protect assets



Understanding Public Benefits



Public Benefits at a Glance

What is Disability?

- Under 18:
- An individual under age 18 is "disabled" if he or she has a medically determinable physical or mental impairment which results in marked and severe functional limitations and can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months.



Public Benefits at a Glance

What is Disability?

- 18 and Over:
- S/he or she has a medically determinable physical or mental impairment which results in the inability to engage in any substantial gainful activity and can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months.
- SGA 2022 \$1,350 per month



Public Benefits at a Glance

Supplemental Security Income (SSI)

- Means tested: Limited income and assets
 - \$967 income, \$2,000 countable assets
- Must be disabled by SSA definition
- Receive monthly income for food/shelter
- Automatic **MediCAID** in NJ
- Deeming

NOTE: \$1 of unearned income is considered \$1 of income; however, \$1 of earned income is considered \$0.50 of income)



Public Benefits at a Glance

Social Security (SS) Social Security Disability (SSD)

- Not means tested
- Need own work credits or parents' eligibility
- SSDI for individuals with own work record
- Social Security for Disabled Adult Child (CDB/DAC):
 - Disabled before age 22 and
 - Parent retired, disabled or deceased
- Receive **MediCARE** 24 months after first payment

SS/SSD benefits could reduce/eliminate SSI



Medical Assistance & Support

- **MediCAID** (with SSI):
 - ✓ Medically necessary services, equipment, hospitalization
 - ✓ Services needed to live at home: personal care, housekeeping, cooking, transportation to doctors
 - ✓ Long term care / Group home
- **MediCARE** (With SSD/DAC (CDB)):
 - ✓ Medical coverage, including doctors, hospital, skilled care



5 Steps to Creating an Effective Plan



Step 1: Envision the Future

- ✓ Where and with whom will the person live?
- ✓ What type/level of care will be required?
- ✓ Will a guardian/conservator be necessary?
- ✓ Who else will be involved?
- ✓ What kind of lifestyle is desired?



Step 2: Create a Memorandum of Intent

- Lays out goals/expectations:
 - Details preferences, needs, wishes
 - Lists key people in person's life
- Helps guide:
 - Family members
 - Trustees
 - Caregivers
 - Others



Step 3: Estimate Income & Expenses

- Monthly income:
 - ✓ SSI, SSDI, SS/DAC, Social Security, earned/unearned income
- Monthly living expenses:
 - ✓ Housing, food, transportation, medical, recreation, etc.

Income - Expenses = Shortfall

Consider how any shortfall will be met



Step 4: Use a Third-Party SNT

- Provides money for living expenses not covered by other income sources (fund with life insurance?)
- May be established by Will or living (inter vivos) trust
- “Living” SNT lets others contribute
- Distributions supplement, not supplant government benefits for child’s special needs



Step 5: Guardianship?

- Will the person need a guardian at 18?
- Is there a less restrictive way to protect the person?
 - Durable Power of Attorney
 - Advanced Health Care Directive
 - Psychiatric Advanced Directive



Children 18 and Over

- ◆ Person becomes legally emancipated at 18, regardless of their physical or mental condition
- ◆ Parents/caregivers may need guardianship to manage person and property
- ◆ *Disability ≠ Incapacity*



Surrogate Decision Making

- Guardianship
- Power of Attorney
- Advanced Directive for Health Care
- Psychiatric Advanced Directive



What is Guardianship?

- Legal authority to make decisions for another person (ward) and manage his/her affairs
- Guardianship of person, property or both
- Guardianship can be Full or Limited
- Guardianship is granted by a court and is court-supervised



Durable Financial Power of Attorney

- Attorney-in-fact given power to make financial decisions
- POA remains in effect even if the principal becomes incapacitated
- Principal must revoke the POA to terminate it
- POA ends on death of principal



Advance Health Care Directive

Written instructions which guide care when you are terminally ill or incapacitated and cannot communicate your wishes

Part 1

Health Care Representative



Part 2

Advance Directive
(Living Will)



Health Care Representative

- Choose a person to make medical decisions for you *IF YOU CANNOT MAKE THEM YOURSELF*
- Give as much or as little authority as you want
- Choose a person who will make the same decisions you would make



Advance Directive

- **Make the more difficult decisions ahead of time:**
 - **Life support**
 - **Feeding tubes**
 - **CPR**
 - **Organ donation**



Supported Decision Making

■ Definition

- A process that helps individuals with disabilities make their own decisions.
- Involves the use of trusted supporters to provide guidance and information.
- NJ does not have a Supported Decision-Making statute



Supported Decision Making

■ Key Features

- **Empowerment:** Preserves the individual's decision-making rights and autonomy.
- **Support:** Provides assistance in understanding, evaluating, and communicating decisions.
- **Flexibility:** Tailored to the unique needs of each individual.
- **Alternatives:** Serves as a less restrictive option compared to guardianship.



Supported Decision Making

Role of Supporters

- **Inform:** Explain options and consequences.
- **Advise:** Offer recommendations without imposing decisions.
- **Assist:** Help with communication or navigating systems.
- **Respect:** Uphold the individual's preferences and choices.



Supported Decision Making

Benefits

- Promotes independence and self-determination.
- Encourages inclusion and participation in community life.
- Reduces the risk of over-reliance on restrictive measures.
- Builds confidence in decision-making abilities.



Supported Decision Making

Examples of Use

- **Financial Decisions:** Choosing how to manage a budget.
- **Medical Choices:** Deciding on treatment options with explanations.
- **Daily Life:** Selecting housing, employment, or educational opportunities.



Supported Decision Making

Implementation Steps

1. Identify the individual's areas of need for support.
2. Select and train trusted supporters.
3. Establish clear roles and boundaries.
4. Create a communication and decision-making process.
5. Regularly review and adapt the arrangement as needed.



ABLE Act Accounts

- Achieve a Better Living Experience Act
 - Available in 46 states + D.C.
 - Available in NJ
 - Can use the ABLE acct from those states that do not require residency
 - Can transfer from one state to another



ABLE Act Accounts

Eligibility

- If under 19, must prove you are blind or disabled per SSA definition
- If over 19, must prove your qualifying disability occurred before 26
- Only ONE Account per qualified individual



ABLE Act Accounts

Basics

- Total combined contributions cannot > \$19,000 per year*
- Contributions generally must be in cash
- Can have assets up to the 529 plan limit (\$305k in NJ)
- If assets > \$100,000 will cause loss of SSI
- Unpermitted distributions can cause loss of Medicaid and 10% tax penalty.

* Changes each year, and is equal to the annual gift tax exemption



ABLE Act Accounts

Basics

- Contributions not tax deductible
- Growth in assets exempt from income tax
- Can transfer \$\$ from 529 Plan to ABLE Account
- Can transfer \$\$ from SNT to ABLE Account



ABLE Act Accounts

Qualified Disability Expenses

- Must be related to disability
- Can include education, housing, transportation, employment training and support, assistive technology and legal fees as well as other expenses per future regulations
- Cannot include many other expenses permissible under the SNT rules, e.g. vacation.



ABLE Act Accounts

Payback Required

Medicaid must be paid back from any money remaining in the account on death of beneficiary



What You Should Do

- Create Memorandum of Intent
- Calculate future financial need
- Establish SNT through will or living trust
- Fund SNT with life insurance, if needed
- Name SNT as beneficiary of Will, accounts, plans
- Consider Guardianship and other options
- Prepare your own Estate Plan (Will, POA
Advanced Directive)



What the Person Should Do

- Appoint you as Attorney-in-Fact (POA)
- Appoint you as Health Care Representative
- Execute Psychiatric Advance Directive if appropriate





The best and most beautiful things in the world cannot be seen or even touched, They must be felt with the heart...



Thank you for your attention!

Raymond J. Falcon, Jr., Esq.



FALCON LAW GROUP
NOT YOUR TYPICAL LAWYERS!

50 Tice Blvd., Ste 340, Woodcliff Lake, J 07677

Tel.: 201-307-0074 | Fax: 201-307-0170

Web: www.falconlawgroup.com

**PROUD TO BE
STIGMA-FREE**