

Social Security Supplemental Security Income Decision Grid  
Trust Exceptions under 42 U.S.C. § 1396p and 42 U.S.C. § 1382b  
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	Entity / Person Establishing Trust	Minor Child (Under 18)	Disabled Adult Not Ruled Incapacitated	Disabled Adult Judicially Ruled Incapacitated
1.	Court	Acceptable	Acceptable	Acceptable
2.	Parent	Acceptable	Unacceptable	Unacceptable
3.	Grandparent	Unacceptable	Unacceptable	Unacceptable
4.	Guardian / Conservator	Acceptable <sup>1</sup>	Acceptable <sup>2</sup>	Acceptable
5.	Parent or Grandparent, UTMA (18)	Acceptable	Not Applicable	Not applicable
6.	Parent or Grandparent, UTMA (21), When Ben. >18 & <21 <sup>3</sup>	Acceptable	Acceptable	Acceptable
7.	Parent or Grandparent, UCTA <sup>4</sup>	Acceptable	Acceptable	Acceptable
8.	Parent or Grandparent, Agent under DPOA <sup>5</sup>	Not Applicable	Unacceptable	Not Applicable

The SSI POMS is currently being reviewed on a case-by-case, state-by-state basis.

In those cases in which a transfer would be unacceptable and thus disapproved at the initial eligibility determination (or, for an extant SSI recipient, the basis for termination) under current POMS policy found at SI 01120.203, *Exceptions to Counting Trusts Established on or after 1/1/00*, Section (B)(1)(e), a request for reconsideration in the ordinary course should be pursued.

In the *W.* case, a Thompson & McMullan, P.C., matter, a special needs trust under 42 U.S.C. § 1396p(d)(4)(a), established by a parent for a disabled, competent adult child under the age of 65, and funded with assets of the adult child by him (personally or by a durable power of attorney) was initially the basis for eligibility denial of an otherwise eligible recipient. SSI approved the trust upon reconsideration and Mr. W. was approved for SSI (and, incidentally, categorical Medicaid eligibility).

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<sup>1</sup> A guardian under Title 31 of the Virginia Code. A conservator cannot be appointed for a minor in Virginia under Title 37.1.

<sup>2</sup> While such a trust would be approved, Virginia law would not allow for the appointment of a guardian or conservator under Title 37.1 for an adult who is not incapacitated.

<sup>3</sup> Virginia law and the Uniform UTMA permit the trust to exist until the child reaches 21. Va. Code Ann. § 31-45 (D).

<sup>4</sup> Uniform Custodial Trust Account for minors or adult who is in fact but not necessarily incapacitated.

<sup>5</sup> Durable power of attorney.