

## **ASK VIVIAN: Sage Planning's Vivian Villers**



### **Q. "Can I pay myself from the special needs trust for being my child's caregiver?"**

The questioner was stating that they would either have to hire a caregiver or take off from work to be their child's caregiver and wanted to know if they could pay themselves for being the caregiver. The answer is, technically, yes, but it depends.

First, it might depend on whether you are taking funds from a first party, "self-settled" trust or a third-party special needs trust. A first-party special needs trust is a payback trust and there are restrictions on how the funds in the trust can be used. Many states actually require that the parents provide care for their children and thus, they cannot pay themselves for something that is legally mandated. Still other states consider it a violation to pay a family member to be a caregiver unless that person is medically trained. If payment is made to a family member who is not medically trained, this can render the trust invalid.

While the Social Security Administration does not prohibit paying family members as caregivers, there can be other problems. Technically, the paid caregiver is an employee of the trust and appropriate tax withholding (from compensation) must be done.

Also, the employer, i.e., the trust, should provide worker's compensation to cover any injury on the job. While this may seem excessive, it is prudent. In the end, it may be easier and wiser to hire a trained caregiver through an agency that is

responsible for paying that caregiver and providing worker's compensation. Labeling the family caregiver as an independent contractor is subject to a myriad of guidelines and can open another "Pandora's box." In some situations, if the payment to a family caregiver is not treated properly, then the payment could be deemed "unearned income" to the SSI recipient, potentially jeopardizing their SSI benefit.

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