

# LEGAL EASE



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## **Advances in medicine create new challenges for many caregivers**

With advances in medicine, not only are non-disabled people living longer, children born with disabilities are living well into adulthood. The longer lifespan for disabled persons presents many challenges to aging parents who have always taken care of their disabled child, especially as the parents worry that they may become disabled themselves. Planning in this area is extremely important, so that the care of the disabled person (now an adult) continues in the manner envisioned by the parents.

It was not too long ago that people were only expected to live a few years past retirement age. Now, as people are living many years past retirement age, Social Security payments are a crucial part of retirement income. But what happens to a person who never worked, and, as such, may only be entitled to SSI payments? Currently, SSI payments are approximately \$674.00 per month (this can vary slightly due to other factors beyond the scope of this discussion). Obviously, this can severely limit an individual's ability to manage most normal expenses. However, an adult disabled before age 22 years may be eligible for his or her own benefits based upon the parent's earning record once the parent is deceased or begins to collect benefits due to retirement or disability.

In order to qualify for Social Security benefits on a parent's work record, the "adult child" must be unmarried, and continuously disabled until the time that he or she qualifies for benefits. Disability is determined under the rules of the Social Security Administration. Since the disabled adult child is usually already considered disabled if he or she is collecting SSI, then the major criteria consists of evaluating the adult child's income. The adult child must not have substantial earnings if he or she is working. "Substantial" earnings are defined (in 2009) as more than \$980 per month. Be aware the rules in this area are very strict, but there may be some leeway when there are expenses incurred in order for the person to be able to work. Therefore, parents must be careful that their adult child does not have more income attributable to him or her than is permitted, if they wish their adult child to be able to collect Social Security benefits on a parent's work record. Gainful employment may be a wonderful opportunity for the adult child, and may result in independence. However, a parent who tries to give a false sense of independence to the adult disabled child may be depriving them of a powerful financial benefit after the parent is no longer able to provide financially for that child.

The Social Security benefit for an adult disabled child amounts to 50 percent of the parent's Social Security benefit at the parent's retirement or disability, and 75 percent of the parent's Social Security benefit at the parent's death. Entitlement to Medicare is frequently possible in conjunction with this.

Parents should also consider including a Supplemental Needs Trust as part of their estate planning. A letter of intent is also an important part of the planning process, so that whoever continues to care for the adult disabled child knows what the parent knows related to the child's likes/dislikes and needs. An attorney who is well versed in special needs planning is the best option to help the family with this process.