

# New Jersey Supreme Court Decides Second Landmark “Special Needs” Case

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October 2, 2014 | by Matheu Nunn

On September 11, 2014, the New Jersey Supreme Court decided [Saccone v. Board of Trustees of the Police and Firemen’s Retirement System](#); its second “special needs” related decision in the past two years (the first being [J.B. v. W.B.](#), 215 N.J. 305 (2013), which was handled by Einhorn Barbarito attorneys, [Patricia Barbarito](#), [Bonnie Frost](#), [Gary Botwinick](#), and [Christopher Roman](#). Although *Saccone* is, at its core, a statutory interpretation case, it involves the now-frequent issue facing parents: how to plan for life with a special needs child who may never become emancipated?

By way of background, a disabled child/unemancipated adult is entitled to receive certain government benefits (Social Security Insurance (SSI), Medicaid, etc.). These benefits are, however, needs-based, which means the government will look to the resources available to the child before a determination will be made as to whether governmental benefits will be provided. If the disabled person has assets and/or one of the disabled person’s parents is receiving child support, both the assets and 2/3 of the child support are included in the “countable resources” of the disabled person. When a disabled person’s “countable resources” are greater than the asset limits that governmental benefits programs set, the disabled individual is ineligible for governmental benefits. For example, to be eligible for SSI in New Jersey, a disabled person cannot have more than \$2,000 of assets or more than \$729.25 of monthly income.

The contents of a special needs trust, however, may be excluded from the disabled person’s “countable resources,” thereby allowing that person to receive governmental benefits. For example, in [J.B. v. W.B.](#), the Supreme Court was tasked with deciding under what circumstances a child support obligation for a disabled unemancipated adult under an existing negotiated agreement may be modified to allow for the creation of a special needs trust. Although the Court ultimately determined that J.B. did not, at the trial court, provide a draft special needs trust that would render A.B. eligible for any government benefits, the Court did provide guidance to both the parties in that case and future

divorcing spouses with special needs children as to how to best address this issue. The Court noted that a parent with a disabled child seeking the court's approval of a special needs plan for the child during or after a divorce must present a specific plan to the court and demonstrate how the proposed plan will benefit the disabled child. The court continued to provide that, at a minimum, the judge must have a complete understanding of the current medical and physical condition of the child as well as the potential governmental benefits available, the amount of the benefits and how long it will take to access benefits.

In Saccone, the Court was faced with a different question, albeit one similar fact – a special needs child. There, the Court considered whether the disabled child of a retired member of the Police and Firemen's Retirement System (PFRS) may have his or her survivors' benefits paid into a first-party special needs trust created for him (as opposed to being paid directly to the child). The Court held that under the relevant statutory scheme, [N.J.S.A. 43:16A-12.1\(a\)](#) and [N.J.S.A. 43:16A-59](#), which provide for survivor's benefits and life insurance to be paid to a surviving spouse and children, a retired member of the PFRS could direct his or her survivor's benefits be paid into a special needs trust. The Court noted that the Legislature specifically provided that: "[i]t is in the public interest to encourage persons to set aside amounts to supplement and augment assistance provided by government entities to persons with severe chronic disabilities." N.J.S.A. 3B:11-36(a). It further held that the pension system's Board of Trustees view of the word "child" in the survivors' benefits statute – that the statute did not permit a trust to be designated as beneficiary – essentially forced the retiree from choosing between abandoning the survivors' benefits or forgoing public assistance programs for ongoing medical needs. The Court found that the Board's interpretation served no legitimate public policy and, rather, actually hurt the very individuals that the survivor's benefits were entitled to benefit.

Accordingly, the Court held that the use of the word "child" in the legislation providing for survivor benefits could include a first-party special needs trust designed for a disabled child.

Saccone and J.B. v. W.B. demonstrate two important issues. First, if you have a special needs child, you must engage in estate planning as soon as possible. Second, if you have a special needs child and are going through a divorce, you need to ensure that your matrimonial attorney discusses and negotiates your marital settlement agreement with the assistance of an attorney specializing in estate planning.