

You First podcast - Episode 6: ABLE United

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Keith Casebonne: Hi, I'm Keith Casebonne. Welcome to "You First", brought to you by Disability Rights Florida. The purpose of "You First" is to discuss the rights of individuals with disabilities -- putting your rights first. This podcast is produced by Disability Rights Florida, a not-for-profit corporation working to protect and advance the rights of Floridians with disabilities through advocacy and education. You can learn more about Disability Rights Florida on our website at www.disabilityrightsflorida.org.

In today's episode, we will discuss ABLE United, a new option for Floridians with disabilities who want to save money or invest money without affecting their government benefits. To tell us more about it today is John Finch, the director of ABLE United. Hi, John. Thanks for joining us today.

John Finch: Thanks, Keith. I appreciate you and Disability Rights Florida for allowing me to come out and talk to you about ABLE United.

Keith: We're glad you could be here. So just a little quick background, in 2014, the ABLE Act was passed. Many individuals with disabilities, however, might not have been aware of it or what it means for them. Can you tell us a little more about the ABLE Act?

John: Yes. So ABLE Act stands for Achieving a Better Life Experience. And it started about 10 years ago when some parents with children with disabilities gathered around a kitchen table and wanted to find a way where they could save for their children without impacting future government benefits. And so, through the work of these parents and various advocacy organizations from around the country, it finally passed in 2014.

And what it does is encourage individuals with disabilities and their families to save private funds -- so that's after-tax dollars -- to support health, independence, and quality of life by allowing states to create tax-free savings and investment accounts, established to support disability expenses, and to do so while maintaining government benefits.

Here in this state, it was actually championed federally by our own Ander Crenshaw -- who just stepped down from his position -- and years of work from various advocacy organizations, but it was ultimately passed through Senate President, Andy Gardiner. And it was housed under the Florida Prepaid College Board, and that's the ABLE United Florida program.

Keith: So ABLE United itself opened its doors in 2015, and as you just mentioned that is Florida's implementation of the federal ABLE program. So tell me who can then open an ABLE account?

John: So like I said it was established under the Florida Prepaid College Board who oversees the Florida Prepaid College Savings Plan as well as the Florida College Prepaid Plans, and they manage over \$10 billion in assets. But when the federal law passed, they put in two main requirements, one, that the individual has to have a disability with an onset prior to age 26, and then, also, that the disability has to be severe enough to meet the Supplemental Security Income,

or Social Security Insurance definitions. This is based on the child standard, marked and severe functional limitations, also, if the disability is expected to last at least 12 months.

Our program is unique. Each state can decide how they want to run our program. It can either be a state-specific program, they can partner with other states, or it can even be a national program. And here in the state of Florida, we decided to be state-specific. So our program is only open to Florida residents, and the individual with the disability has to be a Florida resident at the time of the application.

Our program is completely online, so you would visit www.ableunited.com. It's a self-certification process. Somebody can open an account on behalf of an individual with a disability, so a parent or a legal guardian, somebody with a power of attorney. So it's not necessarily that the beneficiary has to manage their own account, but they can.

Keith: So tell me more what self-certification means?

John: So self-certification -- what's unique about this program compared to other programs that are geared towards individuals with disabilities is that there's no paperwork required when you apply for an ABLÉ United account. So there's no medical documentation you have to upload. There's no prior authorization you have to receive from the state. You're basically, under penalty of perjury, saying that you meet the disability requirements and that it's between you and the IRS, and we're just the administrator of the account. So the whole process to enroll, it takes about 15 minutes.

Keith: Not bad. So once the account is opened, how does one use it? What do they use it for?

John: So the purpose of this account is to pay for what they call future qualified disability expenses. And this is a pretty wide range of different expenses -- health, housing, transportation, even funeral and burial. So you can see it's a wide range of different services that individuals can use. And what's unique is that it doesn't have to be for the sole benefit of the individual with the disability. So for example, if this account was used to purchase a vehicle and Mom and Dad occasionally used it to help run additional errands, as long as the primary benefit was for the individual with the disability that would still be a qualified disability expense.

Also, what's unique is the Treasury regs that came out, although they're pending, they basically gave us some guidance to say that this is supposed to be construed broadly. And the only example they really gave us was, let's say, you have somebody that might be autistic and can get easily lost in the community. So if they had a cell phone plan and were able to use that cell phone to help navigate and communicate that would be a qualified disability expense for that phone and that cell phone plan. So it's supposed to be construed broadly.

And Social Security, they have only given guidance on two areas where it would not qualify as a qualified disability expense, and that would be, for example, gambling, or giving the money in the account away. So other than that, as long as you can justify it's for the health and quality of life of the individual, then it would be a qualified disability expense.

Keith: Somebody couldn't gift money to someone else from that account.

John: Exactly. You can't go and buy gifts for other people with those accounts. Also, on that note, how you access the funds is unique. Once again, it's an online product, so you're not going to go into a bank or something like that in order to open these accounts. But you manage your account online, you withdraw your funds online. And you can do an electronic transfer to a checking account or a savings account, or you can request a check to be sent to you or to some other payer, and you get two of those a month for free.

Keith: Pretty flexible. So the ABLE account, you mentioned how you can save money and pay bills with it, but it's also an investment account. Can you tell us a little bit more about the investment options available?

John: Yeah. So what's unique is as a lot of these programs are opening nationwide, there's different options. And so, here in the state of Florida, we have several different options. Three are predesigned portfolios, and they're designed to meet the needs of most beneficiaries and their families and meet their needs -- conservative, moderate, and growth options. But those options are made up of four underlying funds, and those can be used to create your own portfolio.

Our savings option is our money market account -- it's Florida PRIME. It's a local government surplus trust fund. And these are funds that municipalities and different state agencies use to put excess funds to get a minimal return on their money. And it was actually created by the Florida legislature to preserve those funds and to earn some interest on them. We also have a U.S. bond fund and a U.S. stock fund, and both of those are passively managed by Vanguard.

So what's great is you have these large organizations like Vanguard -- that oversee trillions of dollars -- are the ones that are actually managing and investing your money, more so than the John Finch and ABLE United who come from a social work background. And then we also have an international stock option, and that's passively managed by BlackRock. So those are the seven different options you can create to make your own portfolio that suits your needs.

Keith: Very good. So you touched on applying for an ABLE account and mentioned that the applicants self-certify that they have a disability. Can you tell me a little more about the disability requirements? Is there an eligibility that can either be accepted or denied? How does that work?

John: That's a great question. Thanks, Keith. So the way the definition is written is it's based on Social Security standards for a child. And so, if an individual with a disability is receiving Supplemental Security Income -- SSI -- based on their disability, or they're receiving SSDI, or have a disability that's on the Compassion Allowances List, those are automatic qualifiers. So if you're receiving those benefits, as long as the disability occurred by age 26, then that's one of the options you would select.

Now let's say you're not receiving some kind of government benefit at this time -- so you're not receiving SSI or SSDI -- what you would do is you would self-certify. And so, what that means basically is you're telling the IRS that although I'm not receiving government benefits, I meet the definition of what those marked and severe, functional limitations are. And Social Security has a long list, in different areas, where you could go on and see the type of disability and what's required to meet that.

What also is unique about this program is there's no substantial gainful activity requirement. So a lot of people think, well, I'm not receiving government benefits because I'm working. But if I weren't working and I didn't have that income then I would qualify for those benefits. So what's unique is this is based on the child standard that necessarily doesn't tie to substantial gainful activity, it's just the severity of the disability.

Keith: I see. So you mentioned, of course, the possibility of an individual who wants to apply having government benefits. Can you explain a little bit how having an ABLE account affects the benefits that a person with a disability receives, such as Medicaid or Social Security?

John: One of the greatest advantages of these ABLE accounts is that for certain federal means-tested programs, they don't count these assets in these accounts -- so that's huge. Whether you're applying for SSI for the first time that resource or asset limit of \$2,000 doesn't apply to the ABLE account. So Medicaid doesn't look at these accounts at all. A lot of different Medicaid programs have asset limits and they don't look at funds in ABLE accounts at all.

Now there are some caveats, first, for Supplemental Security Income. The first a hundred thousand dollars in an ABLE account will not count towards that \$2,000 resource limit. Additionally, housing and non-qualified disability expenses withdrawn in the same month will also count as a resource at the beginning of the next month.

So for example, let's say, Johnny's receiving a SSI check, and he's using his ABLE account to pay for his rent. And we're in January, so he wants to pay for his February rent. So if he withdraws that money in January and holds it over into the beginning of February, and uses that money then to pay for housing, SSI is going to say, okay, that money that you took out in January for use for housing expenses in February will count as a resource and towards that \$2,000 limit.

So the best way to get away from that, if you are using this for housing and you have SSI, just make sure that you have the ABLE account pay the landlord directly. And in other cases, when you get to that a \$100,000 limit, make sure you either spend down, or use funds appropriately so you don't reach your max.

With Medicaid, there is a repayment clause in the statute and it's a little bit different than other Medicaid recovery that currently exists. For example, a first-party special needs trust, there's an automatic clause that if they're receiving Medicaid, as soon as the individual passes, those funds go straight to the state. It's a little bit different with ABLE in that outstanding qualified disability expenses can be paid first out of these accounts. You can pay for funeral and burial.

Also, the state is not a beneficiary of the ABLE account, they would have to be a creditor. So they would actually have to file a claim on that account and go through those procedures in order to recoup any of those funds. So it's a little bit different in that story.

Keith: You said you can pay the bills directly through the ABLE account. You can cut a check to your landlord, for example?

John: Yeah, exactly. So what's unique is you have an option. It's a third-party check, so you can go on there and type in an address and to who it's for, an amount, and the ABLÉ account will cut a check and it will be sent within a day to that individual.

Keith: Wow. That's interesting. Really cool. Well so let's talk about income and how that affects one with an ABLÉ account. So does having an ABLÉ account allow someone with government benefits to earn more income?

John: So what's unique about an ABLÉ account is there are three key benefits. First, you're saving tax-free for future expenses. So you can put more funds in this account and that's going to allow the account to accrue, hopefully, interest on it and not have to pay taxes on an interest. You can save while maintaining federal benefits, and you can also save with the help of family and friends, so anybody can contribute into these accounts.

So an ABLÉ account, overall, is more of a sheltering of assets or resources, and unearned income. So for example, if grandparents were giving an individual money, or family, or even an organization, or business, if they put money straight into an ABLÉ account, it won't count as unearned income for that individual. So the ABLÉ account does not necessarily shelter earned income, but it can, in some instances, shelter unearned income.

Keith: And what's the difference between unearned income, earned income, and assets?

John: That's a great question. And I'm not a benefits czar, or know everything about benefits, but I can explain high-level how Social Security views this, and this is only for individuals receiving Supplemental Security Income and would it really impact them.

So income for the purpose of SSI includes money you earn from working, money you might receive from other resources, such as Social Security Disability, workers' comp[], unemployment benefits, maybe you receive funds from the Department of Veteran Affairs, even friends or relatives. So those examples would be unearned, but money you work and you receive that's earned income. And also, SSI counts free food and shelter as income.

As for resources that are also assets, these are things that you have such as cash, bank accounts, vehicles, life insurance policies, accounts, stocks. Those are what they call resources or assets. So although an ABLÉ account can't shelter your earned income, it can shelter your unearned income -- funds you receive from family or friends.

Keith: So that gift that someone gives you, who's not the beneficiary, but the family member who wants to give you a thousand dollars to put into your ABLÉ account, that gift is considered unearned income and does not count against someone's income limit?

John: That is correct. As long as the funds are contributed directly to the ABLÉ account and not made out to that person's name, or given to that person directly, SSI will not consider that as unearned income. And with these accounts, you can receive up to \$14,000 per year from all sources and that's based on the gifting tax. So you can have family, friends, even your own money can go into these accounts, up to \$14,000 a year from all sources, and it not count as unearned income towards an individual.

Keith: Wow. So you mentioned, of course, you don't have to have Medicaid, or SSDI, or SSI benefits to qualify for an ABLE account. So let's say you have an ABLE account, and now, you want to apply for government benefits and you meet the income requirements. How does having an ABLE account affect their eligibility?

John: So the purpose of this account when it was originally created, it was parents that had children who were thinking, if I put money aside and it's tied to their name, when they turn 18 and they're no longer looking at my income, or my resources and it's just individuals, that can negatively impact them if they have over \$2,000. And so, when they created this they basically said ABLE accounts, the first hundred thousand for SSI generally funds an ABLE account, and even withdrawn from an ABLE account, won't be considered as an asset or a resource -- so you won't fall under those eligibility guidelines that SSI has.

And Medicaid, once again, they don't look at these accounts at all. And so, we are parting here with our various state agencies, with the Department of Children and Families. When you do your annual review, or you report to them, we're working with their office, and they're very much aware of the ABLE Act and how it's impacting their programs.

Keith: Great. So there are other options out there for saving and investing. There's special needs trusts, pooled trusts, qualified income trusts, etc. Without getting, obviously, too much into the weeds on those very complicated things, what are some of the basic differences of how an ABLE account is different than those and maybe a better option for someone with a disability?

John: Great, Keith. And just to do my disclaimer, I'm not a financial professional, or an attorney, so the information I'm providing is just strictly for informational purposes. But yeah, you made a great point -- what about special needs trusts, or qualified income trusts is another one, or pooled trusts? What's the difference between these?

And when this was created it wasn't to replace those, it was more of a complement to those. And I kind of think of it, personally, as I'm saving for retirement one day, and then I also have a savings account for emergencies down the road. And so, that's how, high-level, I view them. But when we talk about special needs trusts it's usually third-party trusts, and these are trusts set up by grandparents, the parents' family, and they're putting their own assets in a third-party. Hence, it's not the individual's money, it's somebody else's money.

And this is more than long term, life estate planning, so you're putting houses in there, life insurance policies, and it's really for if a family member, or the primary caregiver passes away this account will be funded to help that individual with the disability still maintain their government benefits and have these funds to be able to assist in that.

Special needs trusts require attorneys to set up. There's also a trustee involved. It's quite expensive sometimes to set up one of these accounts. We're talking a couple of thousand dollars up to \$5,000 to set up a special needs trust. They have to be approved usually by Social Security or Medicaid if the individual's receiving that. So that's high-level, special needs trusts.

And a lot of people are using ABLE accounts in conjunction with special needs trust. They're using funds from a special needs trust to fund that ABLE account, which allows an individual

with a disability some of that financial flexibility to use their account and use those funds how they see fit for their own quality, health, and improvement of their life.

Also, there's something called pooled trusts. And so, what's unique about a pooled trust is it's usually set up by a non-profit. It's sort of like a special needs trust except this non-profit is pooling all the different funds from different individuals together, and it's used to help pay people for their various expenses. Usually there are higher fees, access to funds can be limited. There's only certain times that a pooled trust would dole out funds. So if you don't need funds at that time, you might have to wait until the next period, so it's more hands-off.

And also, it's only as good as the non-profit managing it. So it's a lot to overtake, so make sure that if you're using a pooled trust to seek someone who has a financial or legal background to explain to you the ins and outs of that non-profit and their ability to manage your funds. So what's unique is ABLE accounts aren't being managed by state governments, but rather it's Vanguard and these financial professionals that oversee trillions of dollars.

And then, last but not least, the one I want to mention that you don't hear too often about is qualified income trusts, and this allows individuals to go back to sheltering earned income that we spoke about. So once you set one up, you have to get permission from the Department of Children and Families to approve it. They can't be canceled. There's an automatic payback once an individual with the disability passes away, the state automatically gets those funds in there. You have to input money into account. There's a monthly requirement to put money in there, or you could lose your Medicaid, so those are kind of a tricky thing.

What's unique about ABLE accounts, like I said, up to \$14,000 a year can be contributed from all sources. So both the individual with the disability, their funds, as well as a third party can put money in here. The beneficiary, or someone on their behalf can manage this account. It's almost like an online savings account, so you have that same kind of feature where you can go and log on and check where your funds are and access your account that way.

We have various savings and investment options that, once again, are managed by large financial companies. And then, there's no additional reporting. This has passed through Congress and through the state. There isn't an approval process. You don't have to go to an attorney to set these up, you can do it on your own.

Our fees are pretty low. Right now, we have a monthly maintenance fee of \$2.50 a month, but that's waived until July of this year. And so, there's small investment management fees on the net of your gain. So it's a fee that you probably wouldn't see, but it's less than \$3.00 per thousand dollars in your account per year. It's a pretty minimal fee to set up one of these accounts. And once again, you don't need an attorney. You can go online and do it yourself.

Keith: Right. Wow. It's very interesting to hear the comparison of the different types of trusts and see how an ABLE account could certainly be a good choice for many people with disabilities. Well, John, I really appreciate you speaking with me today. With anything new there's always questions and misunderstandings on how to use it, and hopefully, this has cleared up a lot of that for our listeners.

It sounds like the key things for them to be aware of are the differences between income and assets, and make sure that they realize that the income requirements that Medicaid or Social Security would have don't go up, that it's not a free ride to suddenly make more income. But the assets themselves are totally protected for you or your loved ones to put money into the account the proper way, directly into the account, written to the account, and not to the actual person that has the account.

John: Right.

Keith: So very cool. All right, well thanks again, John. I really appreciate your time with us. If you want more information about ABLE United, or how to open an ABLE account, you can visit their website at www.ableunited.com.

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You can learn more about the services we provide, explore a vast array of resources on a variety of disability-related topics, and complete an online intake on our website at www.disabilityrightsflorida.org. You can also call us at 1-800-342-0823.

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