

October 20, 1995

Honorable Milt Erhart
State Representative, District 14
Idaho House of Representatives
STATEHOUSE MAIL

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: Eligibility for Medical Assistance

Dear Representative Erhart:

Your request of October 6, 1995, has been forwarded to me, concerning eligibility of individuals who may have received funds from a community fundraising effort to offset expenses of a catastrophic illness or accident.

You have asked two explicit questions: (1) Would fundraising and acceptance of contributions directly by or on behalf of the victim of a catastrophic event be considered income for AABD or Medicaid eligibility? (2) Would a trust such as the example provided be sufficient to exclude the funds for purposes of determining eligibility?

As always in this area, much will depend on the facts of the particular situation. An individual could have a catastrophic health situation due to an accident from which he or she could be expected to recover in a relatively short time. Such a person would not meet the definition of "disabled" for AABD or SSI. 42 U.S.C. § 1382c(a)(3).

Funds paid directly to the victim would be considered income; for funds paid on behalf of the victim but not held in his name, not available to the individual and not the victim's money, there would be no problem with eligibility.

As to the second question, the sample trust you provided purports to be a special needs trust, which is a type of trust that is exempt from consideration for eligibility so long as disbursements comply with 42 U.S.C. §§ 1917(c) and (d), asset transfers and trusts. Section VI is a problem since the remaining funds at the time the trust is terminated are not applied to Medicaid expenditures. *See* 42 U.S.C. § 1396p(d)(4). For a trust that qualifies as exempt, payments made from the trust for clothing, food or shelter are income for eligibility purposes.

As you can see from this response, the requirements of federal law relating to trusts and eligibility are the source of the state's rules. This letter cannot even begin to

address the complexities of these types of situations, and individuals facing them should consult with knowledgeable legal counsel.

Very truly yours,

JEANNE T. GOODENOUGH
Deputy Attorney General
Chief, Human Services Division