

IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-0736

IN THE MATTER OF THE MEDICAL ASSISTANCE
POOLED SPECIAL NEEDS TRUST OF SCOTT HEWITT

Iowa Department of Human Services,
Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR JASPER COUNTY
THE HONORABLE THOMAS P. MURPHY, DISTRICT JUDGE

**FINAL REPLY BRIEF FOR APPELLANT
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CERTIFICATE OF SERVICE

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT ERRED IN FINDING THAT THE TRUSTEE IS ENTITLED TO RETAIN HEWITT'S RESIDUAL FUNDS PURSUANT TO THE STATE AND FEDERAL STATUTES AND ASSOCIATED REGULATIONS.

Cases:

Center for Special Needs Trust Admin., Inc. v. Olson, 676 F.3d 688 (8th Cir. 2012)

Cox v. Iowa Dep't of Human Servs., 920 N.W.2d 545 (Iowa 2018)

DuTrac Comm. Credit Union v. Hefel, 893 N.W.2d 282 (Iowa 2017)

Lewis v. Alexander, 685 F.3d 325 (3rd Cir. 2012)

McGill v. Fish, 790 N.W.2d 113 (Iowa 2010)

National Foundation for Special Needs Integrity, Inc. v. Reese, 881 F.3d 1023 (7th Cir. 2018)

Pfoser v. Harpstead, 953 N.W.2d 507 (Minn. 2021)

Statutes and Rules:

42 U.S.C. § 1396p(d)(4)(C)

42 U.S.C. § 1396p(d)(4)(C)(iii)

42 U.S.C. § 1396p(d)(4)(C)(iv)

Iowa Code chapter 633A

Iowa Code chapter 633C

Iowa Code § 633C.4(2)

II. WHETHER THE DISTRICT COURT ERRED IN FINDING THE TRUSTEE PROVIDED A SUFFICIENT ACCOUNTING.

Cases:

In the Matter of the Medical Assistance Pooled Special Needs Trust of Steven Muller, No. TRPR080347 (Iowa Dist. Ct. for Scott Co. Mar. 9, 2022)

Statutes and Rules:

Iowa Code § 633A.4213

Iowa Code § 633C.4(2)

ARGUMENT

I. The District Court Erred in Finding that the Trustee is Entitled to Retain Hewitt’s Residual Funds Pursuant to the State and Federal Statutes and Associated Regulations.

Federal and state law and guidance dictate that the Trustee may only retain funds from the subaccount of a deceased pooled special needs trust beneficiary for specified purposes and must provide an accounting to DHS to demonstrate proper use. Throughout its brief, the Trustee proposes a narrow reading of the applicable authorities, selecting isolated words or phrases in support of its position. However, the requirements must be viewed in the context of the entire statute and regulatory framework, including the relevant state statutes. The Trustee’s actions in this matter do not comport with these requirements, and the District Court erred in finding otherwise.

a. The Trustee’s Statutory Role Does Not Entitle it to Ignore Other Applicable Requirements.

The Trustee’s brief focuses on the statutory role of the Trustee in operating pooled special needs trusts. DHS does not dispute that this function is codified and offers an important service to disabled individuals (although in Mr. Hewitt’s case, the arrangement “did not benefit him substantially.” Appendix “App.” 169). However, the

statutory role of the Trustee does not entitle it to act with unfettered discretion, outside the rules applicable to other trustees, in executing the functions set forth in 42 U.S.C. § 1396p(d)(4)(C).

One of the primary purposes of pooled special needs trusts is to allow individuals with less resources to pool their money together, reducing administrative burden and expense. This concept is recognized in case law: “The pooled special needs trust was intended for individuals with a relatively small amount of money. By pooling these small accounts for investment and management purposes, overhead and expenses are reduced and more money is available to the beneficiary.” Lewis v. Alexander, 685 F.3d 325, 333 (3d Cir. 2012). The Trustee has not identified any authority which suggests that Congress anticipated or intended these trustees to keep large sums of money for themselves without any oversight or monitoring.

In discussing the Trustee’s statutory obligations, the Trustee ignores the state statute which also outlines the Trustee’s role and responsibilities—specifically, that it is “a fiduciary for purposes of chapter 633A” and “shall not take any action that is not prudent in light of the state’s interest in the trust.” Iowa Code § 633C.4(2). The statute also requires the trustee to “submit an accounting of the disposition of

the trust to the district court sitting in probate on an annual basis.” Id. These obligations are independent of, and in addition to, those duties outlined in federal statute. The Trustee can comply with all the applicable requirements and should be ordered by the court to do so.

The Trustee further states in its brief that “[r]etained funds are not impermissibly kept by the nonprofit so long as used for the benefit of other pooled-trust beneficiaries.” Appellee’s Brief p. 13. DHS agrees—the goal of these proceedings is for DHS to obtain sufficient information to verify that funds have been used for a permissible purpose. App. 6–8. As evidenced by the footnote to this statement, the Trustee proposes keeping funds in limbo and disbursing them without court review after the funds have been “retained.” Appellee’s Brief p. 13. This is not the process or framework envisioned by the statutes. The Trustee’s statutory role does not give it authority to ignore requirements in 42 U.S.C. § 1396p(d)(4)(C) and Iowa Code chapters 663A and 633C.

b. The Plain Language of the Statute Imposes Limits on the Trustee’s Retention of Funds.

Both parties recognize the importance of statutory interpretation in resolving the issues in this case. In its brief, the Trustee acknowledges that ambiguity in statutory language “may arise from the

meaning of the particular words in the statute” **or** “from the general scope and meaning of a statute in its totality.” McGill v. Fish, 790 N.W.2d 113, 118 (Iowa 2010). The Trustee then delves into the definition of the word “retained.” Appellee’s Brief pp. 16-17. However, the issue lies in how this provision interacts with the totality of the statute. The first sentence of 42 U.S.C. § 1396p(d)(4)(C)(iv) cannot be read in isolation from the other parts of this section. “When we interpret a statute, we assess the statute in its entirety, not just isolated words or phrases.” DuTrac Comm. Credit Union v. Hefel, 893 N.W.2d 282, 294 (Iowa 2017) (citation omitted).

One of the requirements for pooled special needs trusts is that accounts are “established solely for the benefit of individuals who are disabled.” 42 U.S.C. § 1396p(d)(4)(C)(iii). This sole benefit requirement cannot be ignored when analyzing the retention requirement in 42 U.S.C. § 1396p(d)(4)(C)(iv). Read together, the statute dictates that the trust may retain funds solely for the purpose of benefiting other disabled persons. 42 U.S.C. § 1396p(d)(4)(C).

The Trustee highlights the District Court language permitting the “pooled special needs trust to retain residue under the right circumstances.” Appellee’s Brief p. 17. This is precisely the problem

highlighted by this case. The Trustee wants to retain all funds in all circumstances, and then decide later how to distribute them, promising it will not do anything prohibited. But this is not permissible. The Trustee may only use funds for authorized purposes and must account for such use. The Department requested more detailed information—to which it is entitled by law—to determine how the Trustee is using the funds and to verify that it is for a permissible purpose. App. 12–13, 35–37. The District Court erred in finding the Trustee was allowed to keep all the residual funds and avoid providing further accounting to DHS. App. 170.

c. There is No Directly Applicable Controlling Case Law, but Persuasive Authority Does Not Support the Trustee’s Unlimited Right to Retain Funds.

In its brief, the Trustee proposes to rely solely on two cases that do not directly address the issues in this case. Appellee’s Brief pp. 18-19. Both Olson and Cox involve pooled special needs trust, so the courts in each case appropriately reference the applicable statute, 42 U.S.C. § 1396p(d)(4)(C). However, both cases are about transfer penalties when funds are placed in a pooled trust when the beneficiary is over 65 years of age. Center for Special Needs Trust Admin., Inc. v. Olson, 676 F.3d 688, 703 (8th Cir. 2012); Cox v. Iowa Dep’t of Human Servs., 920

N.W.2d 545, 559 (Iowa 2018). This has nothing to do with retained funds. Accordingly, the opinions do not provide analysis of the retained funds provision or substantive review of how that language interacts with other requirements. As such, these cases are not determinative as to the central issue in the present case.

Indeed, the Trustee acknowledges as much by asking the Supreme Court to retain this matter, stating that “[t]his case presents substantial issues of first impression.” Appellee’s Brief p. 7. If there were controlling authority directly on point, this would not be an issue of first impression appropriate for retention by the Supreme Court.

The Trustee again takes a narrow view in its position that cases which directly address the issue of retained funds are inapplicable. Perplexingly, the Trustee argues that the strongest case in its favor, Lewis, is distinguishable. Appellee’s Brief pp. 21-22. But the Trustee’s argument misses the point. The fact that Iowa and Pennsylvania had different state statutory requirements is not dispositive to the relevant question. In Lewis, the court found that certain state provisions directly conflicted with the federal statute and were, accordingly, preempted. 685 F.3d at 348. However, federal law did not preempt the state law requirements regarding trust oversight. Id. at 352. Iowa law

contains no such provision allocating repayment percentages; it does have trust oversight requirements which are similarly not preempted and with which the Trustee must comply.

With respect to the Reese and Pfoser cases, the Department does not disagree that the language in those trust agreements is different than the language in the specific trust agreement in this matter. Yet in both cases, the courts' analysis indicates that the trust language is reflective of federal requirements. Reese, 881 F.3d at 1026; Pfoser, 953 N.W.2d at 522. This premise is foundational to the courts' analysis. The courts view as a given that there are some limits on the retainage requirements imposed by federal law, and the operative documents are developed based on that understanding. Id. Reese and Pfoser recognize that retainage is not merely a windfall to the Trustee.

Lastly, the Trustee fails to explain how the nature of the dispute in Reese as one between the Foundation and the estate changes the application of the relevant law. Appellee's Brief pp. 22-23. If anything, Iowa law makes clear that Medicaid is in a better position than the estate or beneficiaries of the estate. Cox, 920 N.W.2d at 559. This is also the reasoning in Lewis, as recognized by the District Court—the federal statute prevents the trust from passing money to the deceased's

estate ahead of the state's interests. 685 F.3d at 349; App. 169. The Trustee's attempts to distinguish relevant case law fail to make clear why the court should not adopt the applicable reasoning in this matter.

II. THE DISTRICT COURT ERRED IN FINDING THE TRUSTEE PROVIDED A SUFFICIENT ACCOUNTING.

State statutes authorize DHS to receive certain information as beneficiary of the trust. Iowa Code §§ 633C.4(2), 633A.4213. In its brief, the Trustee continues to make general assertions that it “uses the trust's funds to pay for the permissible services” and provided “a sufficiently detailed accounting.” Appellee's Brief pp. 26-27. The same questions remain: What services? For whose benefit? When and how much were these expenditures? The Trustee does not provide any detail about the expenditures. It cannot point to any specific or detailed information in the record because none has been provided. The Trustee, as fiduciary, cannot satisfy their accounting obligations by simply promising that funds are used appropriately.¹

¹ Notably, this is the holding of the District Court in the companion case to this matter, referenced in the Appellant's Brief and the Joint Motion to Consolidate for Oral Argument and Case Consideration, filed in this matter on August 24, 2022. Reconsideration and Ruling on Parties' Cross Motions for Summary Judgment, In the Matter of the Medical Assistance Pooled Special Needs Trust of Steven Muller, No. TRPR080347 (Iowa Dist. Ct. for Scott Co. July 18, 2022).

Finally, DHS does not “now unilaterally demand[] unending and intensive monitoring of the pooled special needs trust which is not contemplated or described by the statute or regulations.” Appellee’s Brief p. 29. The requests made by DHS in this matter are standard for trusts within its purview. DHS seeks to provide the oversight plainly contemplated in federal statute and regulations as the single state agency responsible for operating the Medicaid program, and perform the monitoring explicitly detailed in Iowa Code §§ 633C.4(2) and 633A.4213. DHS simply requests for the court to enforce the requirements already outlined in statute and recognized by other courts addressing similar questions.

CONCLUSION

For the foregoing reasons, and as described in Appellant’s Brief, the District Court erred in finding that the Trustee could retain Hewitt’s funds and avoid its obligation to provide DHS with a sufficient accounting. Accordingly, the decision of the District Court should be reversed. The Trustee should be ordered to provide an accounting showing that the funds have been used in accordance with federal requirements and further directed that retained funds may only be

used for the benefit of individuals who are disabled; otherwise, residual funds must be paid to DHS as required by state and federal law.

COST CERTIFICATE

We certify that the cost of printing the Appellant's Reply Brief was \$ 0.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:
 - This brief contains 1,939 words.

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DATED: September 1, 2022

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