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10th Annual Changes and Trends Affecting Special Needs Trusts

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Case Law Update
A Look at Recent Regional and National Cases Involving Special Needs Trusts, as Well as Other Cases of Note

Mary Alice Jackson, Esq.
Rebecca C. Morgan Professor of Law

Mary Alice Jackson, Esq.
maj@majackson.com

Rebecca C. Morgan
morgan@law.stetson.edu

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Mary Alice Jackson, Esq. Austin, TX
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1. ***In the Matter of the Guardianship and Estate of Munoz-Gomez v. Eirich*, 1 CA-CIV 12-0518 (Ariz. App., May 9, 2013) (memorandum).**

To facilitate approval of a minor conservatorship, appointment of conservator and establishment of a self-settled special needs trust, a personal injury law firm hired an attorney familiar with SNTs and benefit eligibility. The initial fees for the attorney were paid from the settlement, which was approved by the trial judge. The SNT attorney received $6,443.18 (from a gross settlement of $500,000) in that initial approval.

Later the attorney requested approval by the probate court of an additional $7,067.71 in costs and fees incurred in assisting with the administration of the trust. After a hearing, the probate court reduced the total fee to $3,000, and the attorney appealed.

In an unpublished opinion the appellate court noted that the attorney was obligated to perform a continuing cost-benefit analysis "to ensure that they further the protected person's best interests and do not waste funds or engage in excessive or unproductive activities." The appellate court notes that the trial judge, in the first hearing approving the initial fees and costs, had inquired "no less than four times" about whether all the parties would work to minimize future costs. The appellate opinion notes that the opinion is not a finding that the attorney was not capable, that the work was not done (and for the benefit of the minor), or that the quality of the work was in any way questionable. "The record reflects that these factors supported" the fee application.

2. *In the Matter of A.N.*, 63 A.3d 764 (N.J. Super. 2013).

The trustee of a SNT for benefit of A.N. sought court approval to purchase a residence and incur costs for the benefit of A.N. The state Medicaid agency was noticed even though A.N. was not at the time receiving Medicaid benefits. The Medicaid agency responded that it took no position on the purchase or maintenance of the residence, but objected to any language suggesting that it might later be bound by the Chancery (probate) Court determination that the proposed expenditures were for the "sole benefit" of A.N. The court nonetheless included

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language that the purchase would "not act to deprive [A.N.] of any government funds or benefits, including, but not limited to, Medicaid."

The Medicaid agency appealed, and the state intermediate appellate court agreed with the agency. Even though the appellate judges agreed that the proposed purchase would be for A.N.'s sole benefit, the lower court's finding "cannot provide a basis to bind [Medicaid] at a future time when a complete and comprehensive analysis of all relevant factors is conducted" in connection with a Medicaid application.

3. ***Wos v. E.M.A.*, 133 S.Ct. 1391 (2013).**

North Carolina's response to the ruling in *Arkansas Department of Health and Human Services v. Ahlborn*, 547 U.S. 268 (2006) had been to adopt a statute that created a presumption that 1/3 of any tort damages collected by a Medicaid recipient were for medical loss, and setting the state's Medicaid lien in that amount. After competing holdings in a federal case and a state case, the U.S. Supreme Court found that the N.C. statute violates the federal anti-lien provision controlling state Medicaid programs. States do not have to use the methodology described in *Ahlborn*, but they cannot "adopt an arbitrary, one-size-fits-all allocation for all cases."

But see ***Bipartisan Budget Act of 2013,* § 202(b), amending 42 U.S.C. §§ 1396a(a)(25), 1396k(a)(1)(A) and 1396p(a)(1)(A)** (effective Oct. 1, 2014) (allowing state recovery from complete settlement).

4. *Sams v. Department of Public Welfare*, 74 A.3d 408 (Pa. Commw. 2013).

After Dustin Sams was injured in a motorcycle accident, he sued, and settled for $380,000. Part of the settlement terms included the defendant providing a structured settlement annuity with a value of $232,474.15. Sams lost his SSI benefits because of the monthly annuity payments of $967.23. The state Medicaid agency treated the settlement as a transfer of assets for less than full consideration, and imposed the annuity rules authorized by the DRA.

Sams appealed, arguing that he had never actually or constructively owned the settlement proceeds and so could not have transferred them. The state's intermediate appellate court upheld the Medicaid agency's determination. Mr. Sams was at all times entitled to receive the settlement proceeds, and by agreeing to the annuity he had made a transfer for less than full consideration. Because his annuity was non-DRA compliant, his Medicaid eligibility was properly denied.

5. *Watkins v. Lake Charles Memorial Hosp.*, 114 So.3d 503 (La. App. 2013).

In a 2003 court judgment, Dustin Watkins was awarded payments from the state "patient compensation fund" for 24-hour care, with payments to his caretaker mother. In an earlier appeal proceeding the payments were set up to be payable to a SNT for Mr. Watkins' benefit. The only requirement: Mr. Watkins' mother was to sign a quarterly certification that there had been no change in his condition in the previous thirty days.

In 2011 officials with the Fund found and read Mr. Watkins' Facebook page, which indicated that he had gotten married and no longer lived with his mother. The Fund then unilaterally suspended payments and his mother sought a court order directing the Fund to

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