CASE LAW UPDATE

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13H ANNUAL CHANGES AND TRENDS AFFECTING SPECIAL NEEDS TRUSTS

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A Selection of Cases from 2016 (and 2017) Pertaining to SNTs

Effect of Distributions from Special Needs Trust on Housing Benefits

DeCambre v. Brookline Housing Authority (1st Cir., Nos. 15-1458, 15-1515, June 14, 2016)

Kimberly DeCambre participated in a federal housing assistance program. During an annual recertification, she disclosed that she was the beneficiary of an irrevocable trust which was funded with the proceeds from a series of legal settlements. The housing authority determined that distributions from the trust were countable income for purposes of qualification for housing assistance, and that Ms. DeCambre's income therefore exceeded program limits. Ms. DeCambre was disqualified from her housing assistance benefits.

Ms. DeCambre's trust gave the trustee sole discretion to determine how the property of the trust should be spent for the needs of Ms. DeCambre. She was not permitted to voluntarily or involuntarily alienate the income or principal of the trust.

Ms. DeCambre alleged a variety of federal and state claims. The defendants removed the suit to federal court.

The district court affirmed the decision of the housing authority in its income and rate calculations, but it remanded the case back to the housing authority for a more thorough examination of the potential exclusion of each expense which might be characterized as a medical expense.

HUD addresses irrevocable trusts in the portion of 24 C.F.R. § 5.603(b) that defines the term "net family assets": "In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income . . . ."

Ms. DeCambre's trust was funded exclusively with the proceeds from a series of tort settlements. The parties agreed that if the settlement proceeds had been paid directly to Ms. DeCambre, they would have been treated as a lump-sum addition to family assets which would have been categorically excluded from annual income under HUD's regulations; however, the housing authority took the position that because the proceeds were paid into the trust and then distributed from the trust to Mr. DeCambre, the distributions were counted as income as they were made from the trust.

The First Circuit Court of Appeals stated that they could discern no reason to exclude lump-sum personal injury settlement proceeds paid directly to a tenant, but not exclude those same proceeds merely because they passed through a trust of which the tenant was a beneficiary. The Court stated that it saw "a potential for untoward results that neither Congress nor HUD likely intended should we accept the [housing authority]'s view."

The First Circuit Court of Appeals concluded that the housing authority improperly counted the distributions from the principle of Ms. DeCambre's settlement-funded irrevocable trust toward her annual income.

Effect of Distributions from Special Needs Trust on Food Stamps

In Re Petition of Hagenbuch, No. 2015-0079 (N.H., Jan. 13, 2017)

Petitioner, Kelly Hagenbuch, began receiving food stamp benefits in 2008. In the course of her recertification for benefits in 2013, she reported distributions from a supplemental needs trust which had been established with the proceeds from a personal injury action the year before. The New Hampshire Department of Health and Human Services counted distributions of $20,344.94 which had been made from the trust for legal fees and administration fees as income to petitioner. The department found that Ms. Hagenbuch's income exceeded the maximum amount permitted by the program and disqualified her from food stamp benefits.

The New Hampshire Supreme Court relied upon federal law in the administration of the food stamp program. The court found based upon 7 C.F.R. § 273.8(e)(8) that when calculating household resources for the purpose of determining whether the household is eligible for food stamps, a state agency may not include funds in certain types of irrevocable trusts. The parties stipulated that Ms. Hagenbuch's trust was an excluded resource.

The court then explained that funds in an excluded trust are treated as income when they are withdrawn, unless the withdrawal is excluded under 7 C.F.R. § 273.9(c). One exclusion is for "[a]ny gain or benefit which is not in the form of money payable directly to the household," including "certain vendor payments." A vendor payment is a payment made by a person outside of the household to a third party for the household's benefit. A vendor payment is excluded from income for the purpose of determining food stamp benefits if the person making the payment uses funds that "are not ***owed*** to the household."

Much discussion was had regarding whether the funds distributed from Ms. Hagenbuch's trust were owed to Ms. Hagenbuch. The court found that the funds were not "legally obligated and otherwise payable to the household." The court explained, "a distribution by a trustee to a third party is an excluded vendor payment if the household does not have a legal right to receive the funds that are used to pay the third party."

The court pointed out that the trustee had the sole discretion to make payments from the trust either to the petitioner or to third parties for the petitioner's benefit; accordingly, the funds were not owed to the petitioner and were not countable income to her.

The state argued that because the trust was established with Ms. Hagenbuch's own funds, no trust distribution could come within the vendor payment exclusion. The court disagreed. The department also argued that because the trust must be administered for the petitioner's benefit, the funds within the trust were "owed to the household." The court disagreed, finding that the household had no legal right to receive the funds.

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