



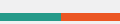
# Case Law Update

15th Annual Changes and Trends Affecting SNTs - UT CLE

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## Cox v. Iowa Dep't of Human Services

2018 WL 6259391, Supreme Court of Iowa (Nov. 30, 2018)

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- Coxes (65+, living in SNF) transferred \$\$ into pooled SNT
  - Iowa DHS determined it was a transfer for less than FMV; imposed transfer penalty
  - Affirmed by ALJ and district court
  - Coxes appealed, arguing:
    - 1396p(d)(4)(C), which excludes PSNTs from being counted as a resource, controls. Not subject transfer provision.
    - Deposit into SNT was not a “transfer or disposal of assets” and no factual analysis to show it was less than FMV

## 42 U.S.C. § 1396p(c)(2)(B)(iv)

An individual shall not be ineligible for medical assistance...to the extent that assets...were transferred\* to a trust, including a trust described in subsection (d)(4), established solely f/b/o an individual under 65 years of age who is disabled;

\*transfer of assets occurs when dispose of \$ for < FMV

## Cox v. Iowa Dep't of Human Services

*(Cont.)*

- Iowa Supreme Court held DHS correctly applied federal law.
  - 1396p(c)(2)(B)(iv) applies to LTC benefits, transfers over 65 must be counted in eligibility determinations
  - Over 65→ may still fund pooled SNT, but transfer penalty
  - Substantial evidence supported DHS finding that transfers were for less than FMV because petitioners gave up full control over their own funds by placing them into the PSNT; future specified benefits were inherently worth less than present full control over cash on hand.

## Donna G. v. Neb. Dep't HHS

2018 WL 6579576 (Supreme Ct. of Nebraska, Dec. 14, 2018)

- Grandma devised her estate to 4 grandkids in a shared testamentary trust. Grandson (Eric) has cerebral palsy
- To preserve Eric's public benefits, probate court approved a written agreement to split the trust- one f/b/o Eric.
- Distribution language remained the same: “[TTE] shall apply such part of...income and principal...as shall be necessary or appropriate to the support, care... and general welfare in such amounts...in the sole and uncontrolled discretion of my TTE...”

## Donna G. v. Nebraska DHHS

(cont.)

- DHHS terminated benefits→ trust counted as resource; not testamentary trust; has support distribution language.
- Admin. hearing and district court affirmed DHHS' decision.
- Mom appealed. Neb. Supreme Court moved to review case.
- Neb. SC held trust is not a resource.
  - Agreement to split trust did not make trust self- or court-settled; essential terms are the same.
  - Though there is support language, key factor is Eric could not compel TTE to make distributions.

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