

# Case Law Update

## 14th Annual Changes and Trends Affecting Special Needs Trusts

Mary Alice Jackson, Esq.  
Austin, TX

### In the Matter of Calley

*2017 CA 0068 (LA Ct. App. Sep. 21, 2017)*

- Calley injured in motorcycle accident; awarded settlement
- In 1989, Irrevocable SNT funded by settlement proceeds
- LA Dept. of Health sought recovery from SNT. Argued Trust shouldn't be payback trust since created before OBRA '93
- Trust stated State can make a claim against trust for medical services provided under SS Act
- District court: language unambiguous; didn't prohibit State from recovering against trust

## In the Matter of Calley (*cont.*)

- Appellate court affirmed. Although SNTs w/ payback language did not become a legal method to obtain or preserve Medicaid eligibility until OBRA '93, fed law didn't prohibit inclusion of payback language prior to OBRA '93.
- Court stated recovering from such assets wouldn't be against public policy.

## Hutson v. Mosier

*2017 WL 3942586 (Kan. App. Sept. 8, 2017)*

- Hutson (70), SNF resident, transferred assets to 1st party pooled SNT. Medicaid app approved, transfer penalty imposed.
- District court upheld penalty bc over age 65 & not a transfer for FMV
- Hutson appealed → argued she received FMV for transfer to pooled SNT (i.e. exchanged legal title for equitable title and was to receive a future benefit by transferring funds into a pooled SNT).
  - Argued state should have burden to prove transfer was less than FMV.

## Hutson v. Mosier (*cont.*)

- Court held, as matter of law, transfers by Medicaid applicants age 65+ to pooled SNTs subject to a penalty period if < FMV.
- Court couldn't determine, as matter of law, if this transfer was < FMV.
  - Possible that investment and MGMT services of pooled SNTs could be considered as compensation to Hutson.
  - Value of SNT services is question of fact → court remanded issue to lower court.

## A.M. v. Div. of Medical Assistance and Health Services

*No. A-4669-14T4, N.J. Super. App. Div. (Sep. 13, 2017)*

- A.M. gifted son home before applying for LTC Medicaid
- Dept. imposed transfer penalty bc < FMV transfer
- Dept. stated Medicaid law contains presumption that transfer for < FMV during look-back period is considered to be made for purpose of establishing Medicaid eligibility.
- Court stated A.M. failed to show transfer was for purpose other than establishing eligibility. Unlikely since A.M. was already in SNF when deed executed.

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