




Case Law Update

15th Annual Changes and Trends Affecting SNTs - UT CLE

Mary Alice Jackson, P.C.
Austin, Texas

Cox v. Iowa Dep't of Human Services

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

- 
- 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.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Case Law Update

Also available as part of the eCourse

[2019 Special Needs Trusts eConference](#)

First appeared as part of the conference materials for the
15th Annual Changes and Trends Affecting Special Needs Trusts session
"Case Law and Legislative Update"