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INSIDE THIS ISSUE

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SELF-SETTLED SPECIAL NEEDS TRUSTS AND MEDICAID PAYBACK

A recent Indiana Court of Appeals case provides an interesting perspective on disbursements from self-settled special needs trusts after the death of the beneficiary. In *State of Indiana, Morgan County Office of the Department of Child Services vs. Hammans, et al* (No. 55A04-0606-CV-294, August 2, 2007), the county agency appealed a lower court order that awarded payment for administrative services to the co-trustees of a self-settled special needs trust and for personal services rendered to the beneficiary.

The beneficiary of the special needs trust sustained a traumatic brain injury in an automobile accident that left him completely disabled and in need of round-the-clock supervision and care. The beneficiary's parents received necessary training to care for him, including performing physical therapy, delivering medications, feeding him through a feeding tube, and respiratory therapy. The beneficiary's parents brought a lawsuit on their son's behalf as a result of the accident, and the court ultimately established a self-settled special needs trust with the proceeds received in settlement of this lawsuit, and appointed the parents the co-trustees of this trust. The trust met the provisions of 42. U.S.C. § 1396p(d)(4)(A), which requires that the trust contain the assets of a disabled individual under age 65, be established by a parent, grandparent, legal guardian or a court, and that the state will receive all amounts remaining in the trust upon the death of the beneficiary. The trust document provided that the trust was intended to provide life-long rehabilitation services to the beneficiary, and it included "expenditures for family members or other persons who provide special care or supervision to the extent of the reasonable value of services provided." The trust document also stated that upon the death of the beneficiary, "the [co-trustees] shall terminate the Trust and distribute the entire remaining balance of the Trust estate" to the State of Indiana in an amount equal to the total medical assistance paid on the beneficiary's behalf under Medicaid.

The trial court supervised the trust and approved all disbursements. On December 7, 2005, the beneficiary unexpectedly died following a two-day illness. The trust had a balance of $143,680, and the state's payments for medical care through Medicaid was $355,632.15. In January 2006, the co-trustees filed a petition seeking administrative fees and compensation for care they provided to the beneficiary, and a petition to pay the trust's final attorney's fees. After the hearing on the petitions, the trial court awarded attorney's fees of $2,500 and payment of $140,000 to the co-trustees for their administrative services and the personal services they provided to the beneficiary. In its order the trial court detailed the services that the co-trustees provided, which comprised 76% of the beneficiary's care, and it stated that the compensation was reasonable. The trial court also stated that the co-trustees had the expectation of being compensated during the beneficiary's lifetime. The court found that the beneficiary's sudden death was an unanticipated event, and that the co-trustees did not have time to file their petitions prior to the beneficiary's death. Further, the court determined that it would have been unlikely that an order permitting payment would have been issued prior to the beneficiary's death. The court stated that "it is completely illogical to conceive of the notion that the significance of the exact moment of death of [the beneficiary] and the timing of an order authorizing payment of a legitimate expense in consideration for valuable services provided to [the beneficiary] by [the co-trustees] over a period of many years, would dictate the outcome for [the co-trustees]. In this instance, if the court had issued an order authorizing payment to [the co-trustees] for personal services immediately prior to death of [the beneficiary], there would apparently be no cause for objection by the state. On the other hand, an order issued by the court immediately following the death of [the beneficiary] is met with opposition from the State. The court finds the state's position is contrary to logic and public policy when the [co-trustees] have essentially 'come to the rescue.'" The court also found that the co-trustees' services saved the state many times the amount it would have spent on institutional care for the beneficiary, and that public policy dictated that the compensation be paid. Only $1,360 remained in the trust for reimbursement to the state, and the court later awarded an additional $750 in attorney's fees. The state appealed the trial court's order.

The State of Indiana argued that the trial court's order was contrary to both the express terms of the trust document, and also the federal Medicaid statute pursuant to 42 U.S.C. § 1396p (d)(4)(A). The Court of Appeals stated that the question presented in this case was one of first impression in the United States. The Court of Appeals examined the language in the trust documents, and said that in order to terminate the trust, the co-trustees "were necessarily required to settle all claims, and the trial court would have to approve all expenditures." Further, the Court of Appeals, citing relevant Indiana case law, stated that "A trustee has an equitable right to reimbursement for all appropriate and reasonable costs incurred in the execution of the trust." The Court of Appeals ruled that a trustee's expenses are a lien upon the trust assets, and that "the trustee must be reimbursed before he or she is compelled to release the trust funds" and repay the state. The Court of Appeals found that "it would be absurd to interpret the trust and the statute in such a way as to condition the payment of legitimate creditors upon the physical receipt of funds from the trust prior to the death of the beneficiary," because such a requirement "would denigrate the level of care available to the beneficiary." The Court of Appeals concluded that the co-trustees' decision to keep funds available in the trust in case new medical treatments became available was not in conflict with their intent to be compensated for their services. The Court of Appeals held that the services provided by the co-trustees were authorized expenditures under the terms of the trust and fulfilled the essential function of the trust. The Court of Appeals affirmed the trial court's order authorizing payment to the co-trustees.

Although this decision does not bind states other than Indiana, it does provide an approach that might be appropriate in similar situations in other jurisdictions. The attorneys at Oast & Hook are available to assist trustees with the administration of special needs trusts and with compliance with state and federal law.

Oast & Hook

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