

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 22-0736

IN THE MATTER OF THE MEDICAL ASSISTANCE  
POOLED SPECIAL NEEDS TRUST OF SCOTT HEWITT

Iowa Department of Human Services,  
Appellant.

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR JASPER COUNTY  
THE HONORABLE THOMAS P. MURPHY, DISTRICT JUDGE

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**FINAL BRIEF FOR APPELLANT  
IOWA DEPARTMENT OF HUMAN SERVICES**

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**THOMAS J. MILLER**  
Attorney General of Iowa

**LAURA F. KRON**  
Assistant Attorney General  
Iowa Department of Justice  
Hoover State Office Building  
1305 E. Walnut St., Second Floor  
Des Moines, Iowa 50319  
Phone: (515) 281-4672  
Fax: (515) 281-7219  
Email: [laura.kron@ag.iowa.gov](mailto:laura.kron@ag.iowa.gov)

**BENJAMIN C. CHATMAN**  
317 6th Avenue, Suite 600  
Des Moines, Iowa 50309  
Phone: (515) 246-9841  
Fax: (515) 246-0155  
Email: [bchatman@sumogroup.com](mailto:bchatman@sumogroup.com)

**ATTORNEYS FOR APPELLANT  
IOWA DEPARTMENT OF HUMAN SERVICES**

## CERTIFICATE OF SERVICE

On the 13<sup>th</sup> day of September, 2022, the Iowa Department of Human Services served the Appellant's Final Brief on all other parties to this appeal via EDMS:

Jana Weiler  
**DENTONS DAVIS BROWN PC**  
215 10<sup>th</sup> Street, Suite 1300  
Des Moines, IA 50309  
515-288-2500 (telephone)  
515-243-0654 (fax)  
Jana.weiler@dentons.com (e-mail)

Elizabeth Meyer  
**DENTONS DAVIS BROWN PC**  
215 10<sup>th</sup> Street, Suite 1300  
Des Moines, IA 50309  
515-288-2500 (telephone)  
515-243-0654 (fax)  
Elizabeth.meyer@dentons.com (e-mail)

Elizabeth Etchells  
**DENTONS DAVIS BROWN PC**  
215 10<sup>th</sup> Street, Suite 1300  
Des Moines, IA 50309  
515-288-2500 (telephone)  
515-243-0654 (fax)  
Elizabeth.etchells@dentons.com (e-mail)

*/s/ Laura F. Kron*  
\_\_\_\_\_  
**LAURA F. KRON**  
Assistant Attorney General

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## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

### I. WHETHER THE TRUST CAN RETAIN RESIDUAL FUNDS OF THE DECEASED BENEFICIARY OF A POOLED SPECIAL NEEDS TRUST ONLY IF SUCH FUNDS ARE USED FOR AUTHORIZED PURPOSES.

#### **Cases:**

Baker v. G&G Living Centers, Inc., No. C 04-2041 EJM, 2006 WL 839254 (N.D. Iowa Mar. 27, 2006)

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National Foundation for Special Needs Integrity, Inc. v. Reese, 881 F.3d 1023 (7<sup>th</sup> Cir. 2018)

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**Other:**

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POMS SI01120.203D.1

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POMS SI 01120.203E.1

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## II. WHETHER THE TRUSTEE MUST PROVIDE A SUFFICIENTLY DETAILED ACCOUNTING TO DHS.

### **Cases:**

In the Matter of the Medical Assistance Pooled Special Needs Trust of Steven Muller, No. TRPRO80347 (Iowa Dist. Ct. for Scott Co. Mar. 9, 2022)

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### **Statutes and Rules:**

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Iowa Code § 633C.4(2)

Iowa Code § 633C.5(2)

## **ROUTING STATEMENT**

The Iowa Supreme Court should retain this case pursuant to Iowa R. App. Proc. 6.1101(2)(c), as it presents substantial issues of first impression. This case follows on Cox v. Iowa Dep't of Human Servs., 920 N.W.2d 545 (Iowa 2018), and provides the opportunity for the Iowa Supreme Court to clarify statements in that case. The questions raised have statewide significance because they implicate one of the funding mechanisms for the Medicaid program.

## **STATEMENT OF THE CASE**

This case relates to the disposition of residual funds in a sub-account of a pooled special needs trust under 42 U.S.C. § 1396p(d)(4)(C), as described in Iowa Code § 633C.1(7), and requirements for the trustee to account for such funds under Iowa Code chapters 633A and 633C.

Scott Hewitt received medical assistance from November 2005 until his death in July 2019. During that time, the Iowa Department of Human Services (“DHS”) paid \$100,217.48 for his care. (Appendix (“App.”) 6). On February 28, 2019, Mr. Hewitt transferred \$32,899.92 into a pooled special needs trust administered by the Center for Special Needs Trust Administration, Inc. (the “Trustee”). When Mr. Hewitt died

on July 6, 2019, \$25,871.92 remained in his account, after withdrawals for Trustee and other administrative fees and pre-need services. (App. 15–23). The Trustee retained the balance of Mr. Hewitt’s funds. (App. 16; 22).

On November 3, 2020, DHS filed a Petition to Invoke Jurisdiction, after the Center failed to do so as required by law. (App. 6–8). DHS requested, among other things, an order for “the trustee to provide a detailed accounting of how the retained funds have been or will be used, and order any funds after the payment of properly retained funds be paid to DHS from the assets of the trust.” (App. 8). The Trustee filed an answer on December 8, 2020, requesting that the matter be dismissed. (App. 9–11).

On May 25, 2021, DHS filed a Motion to Require Trustee to File a Final Report and Accounting, citing Iowa Trust Code as the basis for the request. (App. 12–14). On September 13, 2021, the Trustee filed its Initial and Final Report, indicating that “[t]otal assets at the end of the reporting period were \$0.00, as all assets had been retained by The National Pooled Trust, pursuant to the terms of The National Pooled Trust.” (App. 15–23; 16). After a request by DHS to provide supplemental information on the disposition of trust funds, the

Trustee requested an additional 30 days to respond. (App. 16). DHS filed a consent agreeing to the 30-day extension. (App. 24–25). Accordingly, the Court issued an order on September 14, 2021, granting the Trustee 30 days to file a supplemental accounting to the Final Report. (App. 26).

On October 7, 2021, the Trustee filed a Supplement to the Final Report. (App. 28–34). In this filing, the Trustee indicated that it “uses the retained funds in furtherance of its nonprofit mission to provide specialized administrative services for persons with disabilities for the purpose of improving their quality of life.” (App. 29). Modifying its previous position, the Trustee relayed that it was “unable to provide a further accounting of the funds . . . because the funds were retained in a master account and are no longer segregated in an individual sub-account.” *Id.* The Trustee disputed DHS’s position that retained funds can only be used for certain purposes and contested the extent of DHS’s beneficial interest in the trust. (App. 30–31). DHS filed an Objection to Supplement to Final Report and Second Motion for More Specific Statement, detailing the failure of the Trustee to comply with court orders and requesting that the Court order the Trustee to file a sufficiently detailed final report. (App. 35–37).

Hours before the scheduled hearing on December 14, 2021, the Trustee filed a motion to stay and a motion for summary judgment, with accompanying brief and statement of undisputed facts. (App. 38–114). In these filings, the Trustee argued that a further accounting was not required and that “federal regulations allow the pooled trust to retain the assets in question following the beneficiary’s death.” (App. 38; 52). DHS timely resisted and responded with its own motion for summary judgment, brief, and statement of undisputed facts. (App. 115–51). DHS reiterated its position that “[t]he trust may retain funds for the payment of administrative expense and for the benefit of pooled trust beneficiaries,” and provided correspondence between DHS and the Trustee reflecting this mutual understanding. (App. 115; 117–23). DHS again requested additional information regarding the distribution of funds, in accordance with its status as a beneficiary of the trust. (App. 116).

The Trustee subsequently filed a combined brief in reply to DHS’s resistance of motion for summary and resistance to DHS’s cross-motion for summary judgment, along with a response to DHS’s statement of facts. (App. 152–62). As part of these filings, the Trustee submitted a Verified Statement of Michelle Diebert, President of the

Trustee, that the funds “now and have always been retained in the trust’s master client account.” (App. 163). It further provided that funds “are used for the benefit of beneficiaries of pooled trust” without clarifying how such funds are used or how such use differs from the fees already charged by the Trustee. *Id.* DHS filed a reply brief, arguing that the funds should be paid to DHS since the Trustee had failed to retain or use the funds in accordance with federal and state law, and otherwise failed to follow the Court’s orders. (DHS Reply Brief p. 8).

On February 1, 2022, the Court heard the parties’ cross-motions for summary judgment. (App. 164). In its ruling dated March 30, 2022, the Court granted the Trustee’s motion for summary judgment and denied DHS’s cross-motion. (App. 172). The Court determined that pooled special needs trusts may retain trust residue “under the right circumstances” and that such circumstances existed in the present case, allowing the Trust to “retain any remaining funds in Hewitt’s sub-account by transferring the funds into the pooled master account.” (App. 170–71). The Court further found that Ms. Diebert’s statement was sufficient verification “that all funds from the master account are used for the benefit of beneficiaries of the pooled trust” and that no

further accounting was needed. (App. 171). DHS timely filed a notice of appeal. (App. 174).

### **STATEMENT OF THE FACTS**

Nearly all the facts in this matter can be fairly characterized as procedural. DHS relies on the above Statement of the Case.

### **ARGUMENT**

#### **I. THE TRUST CAN RETAIN RESIDUAL FUNDS OF THE DECEASED BENEFICIARY OF A POOLED SPECIAL NEEDS TRUST ONLY IF SUCH FUNDS ARE USED FOR AUTHORIZED PURPOSES.**

#### **Standard of Review**

The standard of review for district court rulings on motions for summary judgment is correction of errors at law. Shelby Cty. Cookers, L.L.C v. Util. Consultants Int'l., Inc., 857 N.W.2d 186, 189 (Iowa 2014).

#### **Error Preservation**

The issue was raised in filings and briefs. It was addressed by the district court in its order, by concluding that the Trustee could retain all the residual funds. Error is preserved.

#### **Merits**

The Trustee has authority to retain funds from the sub-account of a deceased pooled special needs trust beneficiary only so long as the Trustee uses such funds for authorized purposes. This principle is



consistent with the framework of the Medicaid program and rules applicable to Medicaid payback trusts. Multiple courts and the parties themselves have acquiesced to this understanding.

As discussed further below, DHS is entitled to a sufficiently detailed accounting to ensure appropriate disposition of retained funds. Any funds beyond those properly retained by the trust must be paid to DHS, as required by federal law.

### **A. The Medicaid Program**

Medicaid is a cooperative state and federal aid program that helps states provide medical assistance to the poor. Lankford v. Sherman, 451 F.3d 496, 504 (8th Cir. 2006); see Iowa Code § 249A.2(3), (6), (7), (10). “State participation in the Medicaid program is voluntary, but states choosing to participate ‘must comply with all federal statutory and regulatory requirements.’” Cox, 920 N.W.2d at 551 (quoting Lankford, 451 F.3d at 504). Iowa participates in the Medicaid program, and DHS is the “single state agency” responsible for administration of Iowa Medicaid. Iowa Code § 249A.4; Baker v. G&G Living Centers, Inc., No. C 04-2041 EJM, 2006 WL 839254 at \*1 (N.D. Iowa Mar. 27, 2006).

Medicaid is a needs-based program, serving individuals and families who lack adequate funds for basic health services and nursing facility care; it is intended to be the “payer of last resort.” In re Estate of Melby, 841 N.W.2d 867, 875 (Iowa 2014). Accordingly, “the program contemplates that families will spend available resources first, and when those resources are completely depleted, Medicaid may provide payment.” Id. In determining eligibility for Medicaid, DHS exempts certain assets such that poor persons do not need to be completely destitute before accessing needed care. See, e.g., Iowa Admin. Code r. 441-75.5(3)(c); In re Estate of Gist, 763 N.W.2d 561, 568 (Iowa 2009).

Upon death, DHS seeks repayment of debts incurred through recovery of estate assets, pursuant to 42 U.S.C. § 1396p(b)(1) and Iowa Code § 249A.53(2), and funds in Medicaid payback trusts established pursuant to 42 U.S.C. § 1396p(d)(4). Recovery of these assets “is consistent with the Medicaid program’s broad purpose of providing for care for those in need, and allowing for recovery by the state in these instances frees more funds for provision of future services.” Melby, 841 N.W.2d at 875. DHS pursues these claims to comply with its obligations under federal and state law, and to help pay for health care and long-term care services for Iowans of limited means.

## **B. Medicaid Trusts**

Among those assets exempt for eligibility purposes, and subject to repayment after death, are Medicaid payback trusts described in 42 U.S.C. § 1396p(d)(4). The special needs trusts identified in (4)(A) and (4)(B) provide that “the State will receive all amounts remaining in the trust upon the death of such individual, up to an amount equal to the total medical assistance paid on behalf of the individual.” 42 U.S.C. § 1396p(d)(4)(A), (B). The language for pooled special needs trusts described in (4)(C)—the type of trust at issue in this case—varies from the others in the same section. A pooled special needs trust must meet the following requirements:

(i) The trust is established and managed by a nonprofit association.

(ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1382c(a)(3) of this title) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

**(iv) To the extent that amounts remaining in the beneficiary’s account upon the death of the beneficiary are not retained by the trust,** the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical

assistance paid on behalf of the beneficiary under the State plan under this subchapter.

42 U.S.C. § 1396p(d)(4)(C) (emphasis added). Iowa Admin. Code r. 441-75.24(3)(c) substantially incorporates these requirements into state rules.

The bolded language in 42 U.S.C. § 1396p(d)(4)(C)(iv) is the subject of the present dispute between the parties. Even with the couched repayment provision, the categorization of pooled special needs trusts with the other Medicaid payback trusts suggests there should be *some* reimbursement in exchange for the exclusion from eligibility, as well as parameters on the use of such retained funds. Case law, federal guidance and prior communications between the parties reflect a shared understanding of limitations on a trust's retention of funds.

**(1) Case Law.** Courts have evidenced varying views on the application of the retainage requirement in 42 U.S.C. § 1396p(d)(4)(C)(iv), but consistently indicate that the trustee is constrained in its actions with respect to retained funds. In a 2018 case, the Seventh Circuit Court of Appeals addressed whether the trustee of a pooled special needs trust was entitled to retain funds upon the

beneficiary's death. National Foundation for Special Needs Integrity, Inc. v. Reese, 881 F.3d 1023 (7<sup>th</sup> Cir. 2018). The court explained that:

[t]he key feature of the special needs trust is that, under federal law, trust assets do not count against the beneficiaries' eligibility for Medicaid during their lifetime... [b]ut **upon a beneficiary's death, the trustee must reimburse the state for any medical assistance the state provided.** § 1396p(d)(4)(C)(iv). The trust agreement can direct who should receive any assets that might remain **after reimbursement.**

Id. at 1026 (emphasis added). Although the beneficiary in Reese did not owe anything to the state—which the court recognized was unusual—the court framed the issue as “what happens to these remaining funds that the government does not claim.” Id.

Consistent with the court's description of federal law, the Reese trust agreement provided that the trustee would not retain any portion of the beneficiary's funds upon death, and amounts remaining in the beneficiary's sub-account would be paid to the state as reimbursement for assistance expended on the beneficiary. Id. Subsequent language in the trust provided that money could remain with the trust if there was no surviving remainder beneficiary. Id.

In its decision, the court recognized the basic principle that the rules on pooled special needs trust contemplate that Medicaid will be repaid. Id. This is the benefit of the bargain for excluding such assets

for Medicaid eligibility purposes. While the case related to the identification of a remainder beneficiary and applied Indiana law to the terms of a specific trust, the foundational premise is applicable to the present case.

Similarly, the Minnesota Supreme Court has recognized that federal law envisions payback to the state. In describing the limitations on pooled special needs trusts, in response to the state’s concerns regarding the use of such trusts to hide wealth for Medicaid eligibility purposes, the court explained:

All pooled special-needs trusts, including the trust operated by [the trustee], must contain a pay-back provision **requiring any funds remaining in a sub-account after the beneficiary’s death to be used to repay the State** for the Medical Assistance benefits received by the beneficiary.

Pfoser v. Harpstead, 953 N.W.2d 507, 522 (Minn. 2021) (emphasis added). The court cites to state law—which explicitly contemplates repayment to the state, subject to a capped amount which may be retained by the trustee only for the benefit of other pooled trust beneficiaries—followed by the signal “*accord*”<sup>1</sup> and reference to 42

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<sup>1</sup> Per Bluebook rule 1.2(a), “[*a*]*ccord*’ is commonly used when two or more sources state or clearly support the proposition but the text quotes or refers to only one; the other sources are then introduced by ‘*accord*.’” (19<sup>th</sup> ed. 2010).

U.S.C. § 1396p(d)(4)(C)(iv). By including this citation, the court indicates that this requirement is captured in federal law, not just the state provision.

Other cases interpreting 42 U.S.C. § 1396p(d)(4)(C) acknowledge that a trust may retain funds but recognize parameters on the use of such retained funds. In Center for Special Needs Trust Admin., Inc. v. Olson, 676 F.3d 688 (8<sup>th</sup> Cir. 2012), the court determined that “[r]esidual amounts in the pooled trust after the beneficiary’s death do not have to be paid back to the state, and **may be kept by the non-profit for the benefit of other pooled-trust beneficiaries.**” *Id.* at 695 (emphasis added). The Third Circuit similarly concluded that special needs trusts are permitted to retain residual amounts in the beneficiary’s account upon death, on the basis that “[r]etaining the residual enables the trust to **cover administrative fees and other overhead without increasing charges on accounts of living beneficiaries.**” Lewis v. Alexander, 685 F.3d 325, 348–49 (3<sup>rd</sup> Cir. 2012) (emphasis added). These authorities delineate constraints on the permissible use of funds retained by the trust.

Although the Iowa Supreme Court has not directly addressed the issue presented in this case, the Court referenced the retainage

provision in a prior case involving the same parties. In the majority opinion of Cox, the Court noted:

Also, if there are funds left in the trust when Edward and Susan die, the trustee will keep the funds or use the funds to reimburse the State for Medicaid expenses. The funds will not go to the estate to pay estate debt nor will the funds go to beneficiaries of the estate.

920 N.W.2d at 559.

The dissent also mentioned retained funds and the impact on Medicaid:

Upon death, if there are funds remaining in the trust corpus not retained by the nonprofit managing the trust, the funds are used to reimburse Medicaid for benefits provided to the recipient. As a result, the qualified pooled trust does not put Medicaid in an inferior position with respect to the assets, but **ensures that Medicaid is in the first position to be reimbursed for expenses in the pooled trust that have not been expended on approved supplemental expenses.**

Id. at 562-63 (emphasis added).

The Court was not asked to consider, and did not assess, any limits on amounts or use of retained funds, or how the retainage provision squares with the state law trust requirements, discussed further below. The dissenting opinion does, however, recognize that it is not the intent of this language to reduce Medicaid's interest or ability to recover residual funds.



Yet, this will be the impact if the Court affirms the district court decision. Trustees permitted to retain all remaining funds in a Medicaid pooled trust, without providing an accounting to DHS or otherwise demonstrating that funds are used to for the benefit of other disabled beneficiaries, will do so. This will effectively foreclose any further reimbursement to DHS from pooled trusts, and decrease the funds available to the Medicaid program for people in need.

**(2) Federal Guidance.** The principles found in case law are similarly reflected in federal guidance. For Medicaid eligibility purposes, including the review of Medicaid trusts, DHS applies certain criteria by reference to requirements under the Supplemental Security (SSI) Act. See e.g., Iowa Admin. Code r. 441-75.1(35)(c)(4); 75.5(4)(b). As such, DHS reviews and relies on, as appropriate, the Social Security Administration’s Program and Operations Manual (POMS). See, e.g., Iowa Admin. Code r. 441-75.13(2)(a). The POMS are guidelines which construe the requirements set forth in federal statute and regulations. In assessing the authoritativeness of the POMS, the Supreme Court explained “[w]hile these administrative interpretations are not products of formal rulemaking, they nevertheless warrant respect.” Washington State Dep’t of Soc. & Health Servs. v. Guardianship Est. of

Keffeler, 537 U.S. 371, 385 (2003) (referencing Skidmore v. Swift & Co., 323 U.S. 134, 139-140 (1944)).

The POMS addresses “Policy for Pooled Trusts Established Under Section 1917(D)(4)(C) of The Act” in section SI 01120.203D (2022), available at <https://secure.ssa.gov/poms.nsf/lnx/0501120203> (as visited July 1, 2022). The introduction section provides an overview of the requirements for pooled special needs trusts, including that:

to the extent that any amounts remaining in the beneficiary’s account, upon the death of the beneficiary, are not retained by the trust, **the trust will pay to the State(s)** from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under State Medicaid plan(s).

POMS SI01120.203D.1 (**emphasis in original**). Under the subheading “State Medicaid reimbursement provision,” the POMS provides that to the extent not retained by the trust, “State(s) must be listed as the first payee(s) and have priority over payment of other debts and administrative expenses, except as listed in SI 01120.203E.”

POMS SI 01120.203D.8. The POMS then dictates:

**The trust must provide payback to any State(s) that have provided medical assistance under the State Medicaid plan(s)** and not be limited to any particular State(s). Medicaid payback also cannot be

limited to any particular period of time; for example, payback cannot be limited to the period after establishment of the trust.

Id. (emphasis added).

The subsequent section, POMS SI 01120.203E, explicitly applies to Medicaid special needs trusts and to Medicaid pooled trusts, as evidenced by both the title and first sentence of the section. This provision outlines allowable administrative expenses which may be paid prior to reimbursement to states, as well as prohibited expenses and payments. Among the allowable expenses are “[r]easonable fees for administration of the trust estate, such as an accounting of the trust to a court, completion and filing of documents, or other required actions associated with termination and wrapping up of the trust.” POMS SI 01120.203E.1. The last item on the (longer) list of prohibited expenses is “payments to residual beneficiaries,” followed by a highlighted box:

**NOTE:** For the purpose of prohibiting payments prior to reimbursement of the State(s) for medical assistance, a pooled trust is not considered a residual or remainder beneficiary. Remember that a pooled trust has the right to retain funds upon the death of the beneficiary.

POMS SI 01120.203E.2. A plain reading of this section indicates that this modifies the last item of the list relating to subject of the note, and that the other allowances and prohibitions continue to apply.

Correspondence from officials at the Centers for Medicare and Medicaid (CMS), the federal agency which regulates Medicaid, further supports this interpretation. When asked about the ability of a pooled special needs trust to retain funds for charitable purposes upon the death of the beneficiary, CMS responded: “No . . . [a]ny trust funds retained by the trustee (the non-profit organization that administers the trust) are expected to be used for trust administration expenses, trustee fees and to benefit the other disabled trust participants.” (App. 145). In another letter, CMS provided guidance regarding distribution of residual funds to disabled individuals who are not beneficiaries of the pooled trusts. (App. 147–48). CMS clarified that “[a] trust is not considered to be ‘retaining’ the remaining funds if it is disbursing the funds to third parties for the exclusive benefit of such third parties where the third parties are not trust beneficiaries.” (App. 147).

Like the POMS, these letters are not the result of formal rulemaking, but are the type of authority “entitled to respect” to the extent they have the “power to persuade” Cox, 920 N.W.2d at 549

(quoting Christensen v. Harris Co., 529 U.S. 576, 587 (2000)). Such agency interpretations and opinions, “[w]hile not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance.” Cox, 920 N.W.2d at 549 (quoting Skidmore v. Swift & Co., 323 U.S. 123, 140 (1944)). This insight is useful, particularly when coupled with the guidance in the POMS and the analysis provided by multiple appellate courts, which consistently recognize limitations on the use of retained funds.

**(3) Parties’ Agreement and Understanding.** Limitations on the use of retained funds have been recognized by the parties themselves. In an April 2013 letter to the Trustee, DHS raised concerns with the trust language, and proposed an interpretation which would allow DHS to approve the trust under review as a statutorily compliant pooled special needs trust. (App. 117–18). Specifically, DHS suggested that “funds in the beneficiary’s sub-account must be used to repay Medicaid to the extent they are not ‘retained by the trust’ for administrative expenses of the trust or for distribution to the sub-accounts of other, existing trust beneficiaries.” (App. 118). DHS requested the Trustee confirm this understanding and “conform to that

understanding in the administration of the trust for beneficiaries who have received Iowa Medicaid benefits.” Id.

The Trustee promptly responded by letter from counsel stating, “I can confirm that the Center is willing to agree with your understanding of 42 U.S.C. §1396p(d)(4)(C)(iv), and I can also confirm the Center honors its word.” (App. 119). To document this understanding, the Trustee included a Standing Amendment to the National Pooled Trust which set forth new language: “Any amounts retained in the Trust shall be used for the benefit of other pooled trust beneficiaries” and “retained surplus Trust property shall be used for the benefit of other pooled trust beneficiaries.” (App. 122).

In 2014, DHS again sent the Trustee a letter outlining its expectations with respect to the use of retained funds based on Olson and Lewis.<sup>2</sup> (App. 110–11). DHS invited the Trustee to provide authority to justify using the funds for other purposes. The record does not reflect a response from the Trustee.

The Trustee later modified the relevant language in the National Pooled Trust. (App. 83–84). As such, the Reformed Declaration of

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<sup>2</sup> Both the 2013 and 2014 letters predated the decisions in Pfoser and Reese. As such, the analysis contained in those cases is not reflected in the correspondence.

Trust applicable to Mr. Hewitt did not include the language described in the 2013 letter, above.<sup>3</sup> However, the new language indicates that the Trust still recognizes limitations on use of retained funds. Section 6.3, titled “Specifically Prohibited Expenses,” lists each of the five items from POMS SI 01120.203E.2. (App. 84). The Trustee has thus recognized that funds can be retained only for certain expenses, consistent with the POMS.

The Trustee may retain residual pooled special needs trust funds only for certain purposes because pooled special needs trusts are established solely for the benefit of individuals who are disabled pursuant to 42 U.S.C. § 1396p(d)(4)(C)(iii) and contemplate repayment to Medicaid in exchange for allowing eligibility. Upon recognizing these limits, the next question is whether the state retains the authority to ensure the Trustee uses funds for appropriate purposes, as demonstrated by a sufficiently detailed accounting. As discussed below, that question must be answered in the affirmative.

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<sup>3</sup> The trust was not submitted or reviewed as part of Mr. Hewitt’s Medicaid eligibility determination. (App. 6; 7).

## **II. THE TRUSTEE MUST PROVIDE A SUFFICIENTLY DETAILED ACCOUNTING TO DHS.**

### **Standard of Review**

The standard of review for district court rulings on motions for summary judgment is correction of errors at law. Shelby Cty. Cookers, L.L.C v. Util. Consultants Int’l., Inc., 857 N.W.2d 186, 189 (Iowa 2014).

### **Error Preservation**

The issue was raised in filings and briefs. It was addressed by the district court in its order, by concluding that “no further accounting need be tendered.” (App. 172). Error is preserved.

### **Merits**

#### **A. A Detailed Accounting is Necessary to Demonstrate Appropriate Use of Retained Funds.**

A pooled special needs trust meeting the requirements of 42 U.S.C. §1396p(d)(4)(C) is a “medical assistance special needs trust” under Iowa law, as defined in Iowa Code § 633C.1(7). Accordingly, these trusts are subject to requirements in Iowa Code chapters 633A and 633C.

Pursuant to state statute, all distributions from pooled special needs trusts “shall be for the sole benefit of the beneficiary to enhance the quality of life of the beneficiary.” Iowa Code § 633C.2. While the



trustee has discretion regarding such disbursements, “[a]ny distinct disbursement in excess of one thousand dollars shall be subject to review by the district court sitting in probate.” Id.

In detailing the powers of the trustee, the statute provides:

The trustee of . . . a medical assistance special needs trust is a fiduciary for purposes of chapter 633A and, in the exercise of the trustee’s fiduciary duties, **the state shall be considered a beneficiary of the trust.** Regardless of the terms of the trust, **the trustee shall not take any action that is not prudent in light of the state’s interest in the trust.** Notwithstanding any provision of chapter 633A to the contrary, the trustee of a medical assistance special needs trust shall be subject to the jurisdiction of the district court sitting in probate and shall submit an accounting of the disposition of the trust to the district court sitting in probate on an annual basis.

Iowa Code § 633C.4(2) (emphasis added). The statute further requires DHS to cooperate with the trust “in determining the appropriate disposition of the trust” and the trustee to cooperate with DHS “in supplying information regarding a trust established under this chapter [633C].” Iowa Code § 633C.5(2).

The above-referenced chapter 633A requires that the “trustee of an irrevocable trust shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and the

material facts necessary to protect the beneficiaries' interest.”<sup>4</sup> Iowa Code § 633A.4213. The statute also outlines consequences for the trustee's refusal to provide such accounting. Iowa Code § 633A.4213(5), (6). In administering a trust, the trustee may reasonably rely on the terms of the trust which alter the duties of the trustee set forth in the trust code, “but nothing in this trust code authorizes a trust to act in bad faith or in disregard of the purpose of the trust or the interest of the beneficiaries.” Iowa Code § 633A.4201(2).

These state law provisions recognize DHS's status as a beneficiary of the trust and codify the ability of DHS to receive certain information by virtue of this position. They further limit the trustee from taking certain actions which would conflict with DHS's interest.

DHS does not read this requirement to mean that the Trustee is prohibited from retaining any funds. The Trustee is, however, prohibited from retaining or using funds for improper purposes, as indicated in federal law, guidance, and case law, or otherwise ignoring the state's position with respect to the trust. Ensuring the trustee uses

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<sup>4</sup> A qualified beneficiary includes one who “would receive property from the trust upon immediate termination of the trust.” Iowa Code § 633A.1102(17). As noted above, Iowa Code § 633C.4(2) explicitly recognizes DHS as a beneficiary for purposes of exercise of the trustee's fiduciary's duties under Iowa Code § 633A.

funds in accordance with these requirements is consistent with the state's interests. Even if DHS does not receive payment in full from residual funds, there is benefit in the Trustee making payments to other disabled beneficiaries of the trust. The way to verify the Trustee's compliance with these obligations is through an accounting.

Further, the Trustee's accounting obligations under state law do not raise preemption concerns. The requirement to supply information to DHS or a court does not change or otherwise prohibit compliance with the requirements for a pooled special needs trust under federal law—the Trustee can comply with both state and federal requirements.

Case law also supports this position. The Lewis court explained that “42 U.S.C. 1396p(d)(4) basically provides a federal definition for what constitutes a special needs trust... States are not free to rewrite congressional statutes” by adding additional requirements. Lewis, 685 F.3d at 344. However, “[t]rusts are, of course, required to abide by a State's general law of trusts.” Id. at fn 15. The court concluded that “there was no reason to believe [Congress] abrogated States' general laws of trusts or their inherent powers under those laws.” Id. at 347. In finding that the enforcement provisions of the Pennsylvania regulations were not preempted, the court reiterated that the state has

retained authority to regulate trusts, including the ability to take action to protect the trust and interests of beneficiaries. Id. at 352.

In addition, a recent district court decision involving the same parties concluded that “the provisions of 42 U.S.C. § 1396p(d)(4)(C) do not preempt all state laws authorizing an accounting of funds within a special needs trust.” Ruling on Cross Motions for Summary Judgment at 11, In the Matter of the Medical Assistance Pooled Special Needs Trust of Steven Muller (“In re Muller”), No. TRPR080347 (Iowa Dist. Ct. for Scott Co. Mar. 9, 2022). The court found that “DHS has the authority to request a proper accounting under Iowa law” and that “[t]he trust cannot claim by its own bad conduct in comingling the trust funds with another account that accounting is now impossible.” Id. at 12. By separate order, the court directed “that the Trust shall file a corrected Final Report stating where and what happened to the funds in question.” Order Regarding Final Report, In re Muller, No. TRPR080347 (Iowa Dist. Ct. for Scott Co. Mar. 9, 2022).<sup>5</sup>

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<sup>5</sup> As of the date of the proof brief, the Trustee had not filed a corrected final report. Parties submitted additional briefing pursuant to the court’s order reopening the record for purposes of a motion to reconsider, and the court had not yet issued its ruling. Order Pending Motions, In re Muller, No. TRPR080347 (Iowa Dist. Ct. for Scott Co. May 5, 2022).

The state’s ability to ensure funds are used appropriately requires the trustee to supply sufficiently detailed information in a timely manner. The accounting requirements at issue in this case fall squarely within the state’s retained authority to regulate trusts. Here, DHS is statutorily recognized as a beneficiary and explicitly entitled to cooperation from the Trustee to obtain information regarding the trust. DHS has a right and an obligation to ensure that funds—which are excluded from Medicaid eligibility determinations and intended to be used for the benefit of individuals who are disabled—are used for appropriate purposes. This state law mandate is compatible with the obligations in federal law.

**B. The District Court Erred in Finding that the Trustee Provided a Sufficient Accounting.**

As described in the preceding sections, a pooled special needs trust may retain funds of a deceased beneficiary for certain authorized purposes, and DHS is entitled to information verifying appropriate disposition of funds. To date, the Trustee has not supplied such information to DHS.

The Trustee’s initial report showed \$25,871.92 as a capital transaction and adjustment with the notation “Trust Retention” under the Account heading (App. 22). Subsequent filings indicate “[t]he

Trustee uses retained funds in furtherance of its nonprofit mission to provide specialized administrative services for person with disabilities for the purposes of improving their quality of life” and not “for any prohibited expenses cited in the POMS” (App. 29). By affidavit of its president, the Trustee states that funds “are used for the benefit of the beneficiaries of the pooled trust” and “were never transferred into an operating accounting used for the benefit of the trustee.” (App. 163).

Essentially, the Trustee makes general assertions about the disposition of funds, without details as to where the funds went, how they were maintained, or distributed, or otherwise spent. As is true for other Medicaid trusts, DHS seeks specific information to verify compliance with federal and state law. That would include “an accounting of those funds, any investment income of the funds, and any commingling of the funds.” (DHS Reply Brief p. 5). Under the terms of and consistent with the spirit of both state and federal law, the Trustee should be ordered to supply sufficiently detailed information to DHS regarding the disposition of Mr. Hewitt’s pooled special needs trust funds.<sup>6</sup>

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<sup>6</sup> If retained funds are not used appropriately, the trustee cannot keep the funds and remain in compliance with federal and state requirements governing special needs trusts. In such circumstances,

## **CONCLUSION**

For the foregoing reasons, the decision of the district court should be reversed. The Trustee should be ordered to provide an accounting showing that funds have been used in accordance with federal requirements and further directed that retained funds may only be used for the benefit of individuals who are disabled, not as a windfall to the trustee.

## **REQUEST FOR NON-ORAL SUBMISSION**

DHS does not request oral argument in the first instance but if argument is granted, requests an equal amount of time to present as that granted to the trustee.

## **COST CERTIFICATE**

We certify that the cost of printing the Appellant's Final Brief was \$ 0.

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the funds must be paid to DHS pursuant to 42 U.S.C. § 1396p(d)(4)(C)(iv).

Respectfully submitted,

**THOMAS J. MILLER**  
Attorney General of Iowa

*/s/ Laura F. Kron*

**LAURA F. KRON AT0011847**

Assistant Attorney General  
Iowa Department of Justice  
Hoover State Office Building  
1305 E. Walnut, Second Floor  
Des Moines, Iowa 50319  
Phone: (515) 281-4672  
Fax: (515) 281-7219  
laura.kron@ag.iowa.gov

**ATTORNEYS FOR  
APPELLANT IOWA  
DEPARTMENT OF HUMAN  
SERVICES**



## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:
  - This brief contains 5,922 words.
  
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DATED: September 13, 2022

*/s/ Laura F. Kron*

**LAURA F. KRON**

Assistant Attorney General