

IN THE IOWA SUPREME COURT

No. 22-0736

Jasper County No. TRPR037690

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

SCOTT HEWITT,

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

APPELLEES' FINAL BRIEF

Elizabeth R. Meyer, AT0010139
Jana Weiler, AT0010992
Elizabeth A. Etchells, AT0012670
DENTONS DAVIS BROWN PC
215 10th Street, Suite 1300
Des Moines, Iowa 50309-3993
Telephone: (515) 288-2500
Facsimile: (515) 243-0654
Email: elizabeth.meyer@dentons.com
jana.weiler@dentons.com
elizabeth.Etchells@dentons.com

ATTORNEYS FOR APPELLEES

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT PROPERLY HELD THE TRUST CAN RETAIN RESIDUAL FUNDS OF THE DECEASED BENEFICIARY OF A POOLED SPECIAL NEEDS TRUST PROVIDED SUCH FUNDS ARE USED FOR AUTHORIZED PURPOSES.

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II. WHETHER THE TRUSTEE MUST PROVIDE ANY ADDITIONAL ACCOUNTING TO DHS.

Cases

Connecticut Nat. Bank v. Germain, 503 U.S. 249, 253–54, 112 S. Ct. 1146, 1149, 117 L. Ed. 2d 391 (1992)

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42 U.S.C. § 1396p(d)(4)(C)

Iowa Code § 633A.4213

Rules and Regulations

441 Iowa Admin. Code § 75.24(3)(c).

ROUTING STATEMENT

The Iowa Supreme Court should retain this case pursuant to Iowa R. App. Proc. 6.1101(2)(c). This case presents substantial issues of first impression. The questions raised have significance for special needs individuals across Iowa, and the Iowa Supreme Court must clarify the requirements of the law.

STATEMENT OF THE CASE

The Center for Special Needs Trust Administration (“the Center”) agrees with most of the Iowa Department of Human Services’ (“DHS”) Statement of the Case and will, therefore, not repeat the procedural history of the case. However, the Center objects to DHS’ statement that the Center modified its position regarding providing an accounting of the retained funds. The Center has never modified its position. In each successive filing, the Center asked DHS to provide instructions as to what specific information it claims would satisfy the Center’s purported obligations under the statute and regulations. DHS has never identified precisely what information it desires.

The District Court correctly held that the Center’s burden was satisfied by the Initial, Final, and Supplemental Accountings provided combined with President of the Center Michelle Diebert’s verification “that all funds from the master account are used for the benefit of the beneficiaries of the pooled

trust.” The District Court correctly stated that “[T]he purpose of the pooled special needs trusts is to benefit all the disabled beneficiaries. The Center has to operate to do so.” Further, the District Court correctly states that “there is no evidence of a breach of its duties as a trustee under Iowa law,” and that DHS would be entitled to reimbursement only if the trustee distributes retained funds to prohibited parties, such as family members of the deceased beneficiary. The District Court did not err in making these findings.

STATEMENT OF THE FACTS

This matter arises out of the DHS’ November 3, 2020, Petition to Invoke Jurisdiction Over Irrevocable Trust pursuant to Iowa Code Sections 633C.1(7), 633C.4(2), and 633A.6201. (Petition, Appendix (“App.”) 57–59). Scott Hewitt (“Hewitt”) died on July 6, 2019, in Baxter, Iowa. *Id.* Prior to his death, Hewitt executed a Joinder Agreement for the Iowa Pooled Trust, establishing a Trust subaccount. (Joinder Agreement, App. 68–75). The Center, as Trustee, accepted and signed the agreement on February 28, 2019. *Id.* at 74–75. The Joinder Agreement contains a provision in accordance with federal and Iowa law stating, “Upon the death of the Beneficiary, all amounts remaining in the Beneficiary’s separate Trust sub-account not retained by the Trust shall be paid to the state of Iowa up to the amount of medical assistance paid on behalf of the Beneficiary.” *Id.* at 70 (Article 3.01). The agreement in

this case expressly limits government reimbursement “to the extent that any such property is not retained by the Trust.” (Reformed Declaration of Trust, Article 6.2, App. 83–84). Following Hewitt’s death, the Trust moved the remaining funds in his sub-account into the Trust’s master account for beneficiaries (not into the Center’s business expenses account as DHS baselessly suggests). (Verified Statement of Michelle Diebert ¶¶ 3, 4, App. 163; *see also* Initial, Final, and Supplemental Accountings, App. 94–102, 105–111).

After Hewitt died, DHS began attempting to recover funds from the pooled trust. (Petition, App. 57–59). On November 3, 2020, DHS ultimately filed a Petition to Invoke Jurisdiction Over Irrevocable Trust pursuant to several provisions of Iowa law. *Id.* In the Petition, DHS asks that the Court: “order 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” *Id.*

The Center, as Trustee, filed an Initial and Final Accounting as required, and, at the request of DHS, the Court ordered the Trustee to produce a supplemental accounting as well. (May 25, 2021 Motion to Require Trustee to File, App. 90–91; September 13, 2021 DHS Partial Consent, App. 92–92). The Trustee did so, and DHS has objected to all such accountings as

insufficient. (September 13, 2021 Initial and Final Report, App. 94–102; October 7, 2021 Supplement to Final Report, App. 105–111; October 18, 2021 DHS Objection to Supplement, App. 112–114). The District Court correctly ruled on the parties’ cross-motions for summary judgment by granting summary judgment to the Trustee, holding that “there is not a genuine issue of material fact as to whether this trust meets the criteria of both 42 U.S.C. § 1396p(d)(4)(C) and Iowa Administrative Code § 441-75.24(3)(c) and for what expenses the remaining funds may be used.” (District Court Summary Judgment Ruling, March 30, 2022, App. 164–173).

ARGUMENT

I. THE DISTRICT COURT PROPERLY HELD THE CENTER MAY RETAIN RESIDUAL FUNDS OF THE DECEASED BENEFICIARY OF A POOLED SPECIAL NEEDS TRUST IF SUCH FUNDS ARE USED AS AUTHORIZED BY THE STATUTE AND REGULATIONS.

Error Preservation:

The Center agrees with DHS’ statement that this issue has been raised in filings and briefs and addressed by the District Court in its order. Error has been preserved.

Standard of Review:

The Center agrees with DHS' statement that the correct standard of review is for correction of errors at law.

Merits:

A. The District Court Did Not Err In Finding That The Center Is Entitled to Retain Hewitt's Residual Funds Pursuant To The State and Federal Statutes And Associated Regulations.

The District Court correctly recognized the statutory role of the nonprofit trustee in finding that the Center properly retained the residual balance of Hewitt's sub-account upon his death. In 1993, Congress created the special-needs trust and pooled trust exception for disabled individuals as an exception to the general rule that people must exhaust their assets before qualifying for Medicaid. *See Ctr. for Special Needs Tr. Admin., Inc. v. Olson*, 676 F.3d 688, 695 (8th Cir. 2012) (citing 42 U.S.C. § 1396p(d)(4); *see also Norwest Bank of N.D. v. Doth*, 159 F.3d 328, 330 (8th Cir. 1998)). The pooled special needs trust at issue here was created pursuant to that exception. *See* 42 U.S.C. § 1396p(d)(4)(C)(2022). Congress assigned such nonprofit trustees a vital role under the statute and regulations: the nonprofit trustees ensure that the special needs national pooled trusts function. *See id.* at § 1396p(d)(4)(C)(i-iv); *see also* 441 Iowa Admin. Code § 75.24(3)(c). The

Center is a qualifying nonprofit under 42 U.S.C. § 1396p(d)(4). *See id.* at § 1396p(d)(4)(C); *see also Norwest Bank*, 159 F.3d at 330.

When assets are placed in a pooled trust meeting the statutory definition, those assets do not disqualify the beneficiary for Medicaid eligibility purposes. *See id.* at § 1396p(d)(4)(C); 441 Iowa Admin. Code § 75.24(3)(c). The requirements for a trust to qualify as a pooled special needs trust are:

(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.

Id. at § 1396p(d)(4)(C) (emphasis added). The applicable Iowa Administrative Code section mirrors the cited United States Code section. 441 Iowa Admin. Code § 75.24(3)(c)(2022).

This Pooled Trust meets the statutory definition of a pooled special-needs trust. First, the Center for Special Needs Trust Administration is a nonprofit association. (Joinder Agreement, Article 1.01, App. 68). Second, separate accounts are maintained for each beneficiary of the pooled trust, with assets pooled for investment and management purposes. *Id.* at 68 (Establishment of Trust). Third, accounts are established by the appropriate persons solely for the benefit of individuals who are disabled. *Id.* at 68 (Article I and Establishment of Trust). Finally, upon the death of the beneficiary, amounts remaining in the trust account are retained by the trust as described in 42 U.S.C. § 1396p(d)(4)(C)(iv). *Id.* at 70 (Article 3.01).

The District Court’s holding tracks the Eighth Circuit Court of Appeals’ summary of the nonprofit trustee’s role: “Residual 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.” *Olson*, 676 F.3d at 695. (quoting 42 U.S.C. § 1396p(d)(4)(C)) (emphasis added). Retained funds are not impermissibly kept by the nonprofit so long as used for the benefit of other pooled-trust beneficiaries.¹

¹ The Center notes that funds are not always redistributed immediately because there is no such requirement.

The District Court relied upon DHS' correspondence dated February 19, 2008, wherein it communicated to the Center that, "Any trust funds retained by the trustee (the non-profit organization that administers the trust) are expected to be used for trust administration purposes, trustee fees and to benefit the other disabled trust participants." (February 19, 2008 Correspondence from Roy R. Trudel to Angela Branch, App. 145–146). That statement is a correct statement of the applicable law. *See* 42 U.S.C. § 1396p(d)(4)(C)); 441 Iowa Admin. Code § 75.24(3)(c); *Olson*, 676 F.3d at 695. The District Court then correctly stated:

Michelle Diebert verified that all funds from the master account are used for the benefit of the beneficiaries of the pooled trust. The purpose of the pooled special needs trusts is to benefit the disabled beneficiaries. The Center has to operate to do so.

If the trustee distributes any retained funds to family members of the beneficiary then DHS will be entitled to reimbursement. The Center provided a sufficient accounting for the retained \$25,871.92 and there is no evidence of a breach of its duties as a trustee under Iowa law.

(Summary Judgment Ruling, App. 171). DHS has not specifically alleged that the District Court committed any errors at law. And, it cannot do so, because the District Court's Summary Judgment Ruling comports with all applicable law and, therefore, is not in error. For these reasons, the District Court's ruling should be affirmed.

B. All Applicable Law Supports the Trust’s Right to Retain the Funds Pursuant to the Parameters Described in 42 U.S.C. § 1396p(d)(4)(C)(iv).

Rather than asserting errors at law in accordance with the application standard of review, DHS has simply reasserted old arguments about statutory interpretation. The parties’ dispute centers on the language of 42 U.S.C. § 1396p(d)(4)(C)(iv): “To the extent that amounts remaining in the beneficiary’s account upon the death of the beneficiary are not retained by the trust” 42 U.S.C. § 1396p(d)(4)(C)(iv). This subsection starts from the premise that excess funds are paid to the state, only if they are not “retained by the trust.” *Id.* The District Court did not err, and its ruling should be affirmed because the plain language of the statute allows the trust to retain the funds, and DHS has not presented any applicable legal authority supporting its interpretation of the statute.

1. The Plain Language of the Statute Allows the Trust to Retain the Funds.

The “starting point in statutory interpretation is to determine if the language has a plain and clear meaning within the context of the circumstances presented by the dispute. We only apply the rules of statutory construction when the statutory terms are ambiguous.” *McGill v. Fish*, 790 N.W.2d 113, 118 (Iowa 2010) (citing *State v. Wiederien*, 709 N.W.2d 538, 541 (Iowa 2006)). “[A]mbiguity only exists if reasonable minds could differ

on the meaning.” *Id.* (citing *State v. Albrecht*, 657 N.W.2d 474, 479 (Iowa 2003)).

Ambiguity “may arise from the meaning of the particular words in the statute” or “from the general scope and meaning of a statute in its totality.” *Id.* “Generally, we presume words used in a statute have their ordinary and commonly understood meaning” as listed in the dictionary. *Id.* (citing *City of Sioux City v. Iowa Dep’t of Revenue & Fin.*, 666 N.W.2d 587, 590 (Iowa 2003); *State v. Lane*, 743 N.W.2d 178, 182 (Iowa 2007)).

Here, the statutory language in question is simple, ““To the extent that amounts remaining in the beneficiary’s account upon the death of the beneficiary are not retained by the trust . . .” 42 U.S.C. § 1396p(d)(4)(C)(iv). DHS has not specifically alleged that any of the language is ambiguous. However, its arguments suggest it believes there is ambiguity stemming from the word “retained” as used within the scope of the statute and regulation. There can be no such ambiguity because reasonable minds cannot differ on the definition of “retained.”

Merriam-Webster’s online dictionary defines the transitive verb “retain” (including “retained”) as: “to keep in possession or use”; “to keep in one’s pay or service”; “to keep in mind or memory”; and “to hold secure or intact.” Merriam-Webster Online Dictionary, last accessed August 9, 2022,

available at (<https://www.merriam-webster.com/dictionary/retain>). The second definition is not applicable here as it refers to payment through a retainer; the third definition does not apply factually. *See id.* Thus, we are left with a definition denoting possession, use, and holding secure. *See id.*

The fact that reasonable minds cannot differ that “retained” in this context means “kept,” “possessed,” or “held secure” is supported by the fact that none of the caselaw presented by either party pauses to consider whether or not the word “retained” means that the residual funds stay within the possession of the Trust under certain circumstances. Rather, the discussion has focused on under what circumstances the funds are kept (or, “retained”) by the Trust. *See* Part B.2, *supra*. The District Court correctly found that the language of the statute is unambiguous and that, “Congress made a deliberate and intentional choice to allow pooled special needs trusts to retain residue under the right circumstances.” (Summary Judgment Ruling pg. 7 and n.22 (citing POMS), App. 170).

Moreover, even if reasonable minds could differ on the meaning of “retained,” within the scope of the statute, both the POMS Manual and the applicable caselaw support the District Court’s conclusion that the trust may retain the funds subject to the parameters of the statute and regulation.

2. Applicable Caselaw Supports the Trust's Right to Retain the Funds.

Applicable Eighth Circuit and Iowa case law support the Center's position. Both the *Olson* case and the *Cox* case support the District Court's ruling that the Trust is entitled to retain Hewitt's residual funds for the benefit of other trust beneficiaries. *See Olson*, 676 F.3d at 688. ; *Cox v. Iowa Dep't of Hum. Servs.*, 920 N.W.2d 545, 547 (Iowa 2018).

In the *Olson* case, the Eighth Circuit Court of Appeals expressly states, "Residual 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." *Olson*, 676 F.3d at 695. The District Court did not err by ruling in keeping with the Eighth Circuit Court of Appeals' reasoning. (Summary Judgment Ruling pg. 5 nn. 11, 13 and pg. 7 n.19, App. 168, 170).

In the *Cox* case, the Iowa Supreme Court recognized and restated the plain language of the federal statute. *See generally Cox*, 920 N.W.2d at 551 (including a section on pooled special needs trust provisions). The Court stated when beneficiaries 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.” *Cox*, 920 N.W. at 559. Similarly, the dissent recognizes that the statute places Medicaid in the first position to be reimbursed for expenses should the Trust not retain the funds and expend them “on approved supplemental expenses.” *Id.* at 562–63. Thus, *Cox* simply recognizes the plain language of the statute: the Trust may retain residual funds for authorized purposes; if it does not do so, then Medicaid is first in line to be paid. The holding in *Cox* does not support DHS’s argument—none of the relevant language in *Cox* is anything other than a correct restatement of the law. In fact, the District Court cited *Cox* multiple times in its Summary Judgment Ruling that held the Center retained funds after Hewitt’s death as permitted by the statute. (Summary Judgment Ruling p. 7 nn.20, 21, App. 170).

3. The POMS Manual Supports the Trust’s Right to Retain the Funds.

The Social Security Program Operations Manual System (“POMS”) supports the District Court’s finding that the Center properly retained the funds. *Id.* at pg. 7 and n.22 (citing POMS). Section 01120.203 of POMS contains a Note stating: “Remember that a pooled trust has the right to retain funds upon the death of the beneficiary.” (POMS SI 01120.203 (E)(2) at Note,

App. 60; *see also* Petition at ¶ 14 (DHS citing Note and acknowledging pooled trust’s right to retain funds), App. 58).

Despite the clear language of the Note in POMS, DHS purports to base its interpretation of the word “retained” on POMS language that applies to multiple types of trusts. (*See* POMS SI 01120.203 at ¶ E (citing two different code sections under which trusts may be established in the heading, App. 60). As such, the cited POMS section lists allowable expenses and prohibited expenses applying to multiple kinds of trusts, not just pooled special needs trusts. *See id.* Furthermore, as found by the District Court, the Trustee does not use the retained funds for any prohibited expenses cited in the POMS—specifically the retained funds are not distributed to family members of the beneficiary, nor are they used to pay inheritance taxes, debts to third parties, or funeral expenses after death. *See id.* at POMS SI 01120.203(E)(2); *see also* Summary Judgment Ruling at pg. 7 (“the trust residue is retained by a nonprofit organization whose purpose is to operate special needs trusts for the benefit of disabled persons”), App. 170).

4. Caselaw Relied Upon by DHS Is Inapplicable, Does Not Support DHS’ Arguments, and Does Not Support Any Contention That The District Court Erred.

Much of the caselaw DHS presents is readily distinguishable from this case. The remainder of DHS’ caselaw is inapposite, unpersuasive, and

irrelevant. Finally, if the Court applied the caselaw, it would not support DHS' arguments nor support DHS' contention that the District Court erred.

First, cases from outside Iowa or the Eighth Circuit Court of Appeals are not binding upon this Court. *Cox* and *Olson* are the only two cases cited from applicable jurisdictions. *National Foundation for Special Needs Integrity, Inc. v. Reese* is a Seventh Circuit Court of Appeals case applying Indiana law; *Lewis v. Alexander* is a Third Circuit Court of Appeals case applying Pennsylvania law; and *Pfoser v. Harpstead* is a Minnesota Supreme Court case applying Minnesota law. *See Nat'l Found. for Sp. Needs. Integrity, Inc. v. Reese*, 881 F.3d 1023 (7th Cir. 2018); *Lewis v. Alexander*, 685 F.3d 325, 348–49 (3rd Cir. 2012); *Pfoser v. Harpstead*, 953 N.W.2d 507, 522 (Minn. 2021). All are outside Iowa or the Eighth Circuit Court of Appeals' geographic region.

Second, and most importantly, this case turns on the interpretation of identical Iowa and federal statutes, not statutes from Minnesota, Indiana or Pennsylvania. *See* 42 U.S.C. § 1396p(d)(4)(C)(i–iv); *see also* 441 Iowa Admin. Code § 75.24(3)(c). *Lewis* is distinguishable because Pennsylvania law contemplated some kind of repayment to the state, whereas Iowa's law mirrors federal law. *See Lewis*, 685 F.3d at 325. In *Lewis*, the Pennsylvania state provision included several requirements that were preempted by federal

law, including a requirement that the trust reimburse the state up to 50% of the amount in the trust upon the death of the beneficiary. *Lewis*, 685 F.3d at 353; *see also* 62 Pa. Stat. Ann. § 1414 (partially preempted by *Lewis*).

Third, *Reese* and *Pfoser* are factually distinguishable from the instant matter based on the trust agreements. In *Reese*, the parties had signed an Agreement stating, “The National Foundation for Special Needs Integrity, Inc., shall not retain any portion of the Beneficiary’s trust Sub-Account upon his or her death,” and including an explicit requirement that the state be reimbursed. *Reese*, 881 F.3d at 1026. In *Pfoser*, “the Trust Agreement also provided that up to 90 percent of any funds remaining in the sub-account at the time of Pfoser’s death must be paid to the State to reimburse the Medical Assistance program” *Pfoser*, 953 N.W.2d at 512.

The Agreement in this case contains no such requirement and expressly limits government reimbursement “to the extent that any such property is not retained by the Trust.” (*See Reformed Declaration of Trust, Article 6.2, App. 83–84*). Further, in *Reese*, the decedent died in the unusual position of not owing Medicaid any funds, whereas Mr. Hewitt died having received some of the benefits to which he was entitled. *Reese*, 881 F.3d at 1026. The parties in *Reese* are not similarly situated to these parties—rather than being a dispute between a state agency and a Trustee, the dispute in *Reese* is between the

Foundation and the Estate. *Id.* These cases are factually distinct. Application of *Reese* to this dispute is both inapposite and unpersuasive.

Additionally, in *Reese*, the Seventh Circuit Court of Appeals quotes a portion of the regulations at issue here but omits the crucial first clause of the regulation. The regulation reads in full:

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)(iv) (emphasized portion omitted in *Reese* order); *see also Reese*, 881 F.3d at 1026 (stating “But upon a beneficiary’s death, the trustee must reimburse the state for any medical assistance the state provided”). The Court’s omission of the first portion of the regulation may have been because the parties had already addressed that clause in their contract by agreeing that the Foundation would not retain any funds upon the death of the grantor. Here, where there is no such contractual agreement, there is no valid justification for obviating the first clause of the regulation. To do so is antithetical to every rule of statutory interpretation. *Reese* is not binding upon this Court. To the extent that the Court does consider it as persuasive authority, the case simply does not support DHS’ arguments.

The District Court did not err in concluding that the Trust permissibly retained Hewitt's residual balance upon his death. None of the caselaw cited by DHS supports DHS' contention that the District Court erred, nor does it support DHS' substantive arguments. It is also distinguishable and inapposite.

5. Other Authority Cited by DHS Supports the Trust's Right to Retain the Funds.

DHS cites additional "authority" including various POMS regulations and correspondence between the parties. The Center does not consider the correspondence binding or illustrative, and the only relevant POMS regulations have been cited above in this brief. However, after exhaustively reviewing this additional material for the Court, DHS comes to this conclusion:

The Trustee may retain residual pooled special needs trust funds only for certain purposes because 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.

The summary judgment record undisputedly demonstrated that the Center has retained funds from Hewitt's subaccount for permitted purposes, such that DHS has no further interest in the funds. The Center and Mr. Hewitt entered into a Trust Agreement that complied with Iowa and federal law. That Agreement contains language allowing the Trust to retain the residual balance of Mr. Hewitt's account upon his death so long as that balance is used for the

benefit of other special needs pooled trust beneficiaries. The Center has filed accountings demonstrating that the funds were retained for permitted purposes. (Initial, Final, and Supplemental Filings, App. 94–102, 105–111; *see also* Summary Judgment Ruling pg. 8, App. 171). Accordingly, the District Court did not err in granting the Center’s motion for summary judgment and should be affirmed.

II THE CENTER HAS PROVIDED A SUFFICIENTLY DETAILED ACCOUNTING TO DHS, AND THE DISTRICT COURT DID NOT ERR IN FINDING THE TRUSTEE PROVIDED A SUFFICIENT ACCOUNTING.

Error Preservation:

The Center agrees with DHS’ statement that this issue has been raised in filings and briefs and addressed by the District Court in its order. Error has been preserved.

Standard of Review:

The Center agrees with DHS’ statement that the correct standard of review is for correction of errors at law.

Merits:

THE DISTRICT COURT DID NOT ERR BY HOLDING THAT THE CENTER HAS PROVIDED A SUFFICIENTLY DETAILED ACCOUNTING TO DHS.

The District Court found that, “The Center provided a sufficient accounting for the retained \$25,871.92 and there is no evidence of a breach of

its duties as a trustee under Iowa law.” (Summary Judgment Ruling, pg. 8, App. 171). DHS argues that this was in error, urging that it must continue to receive detailed accountings from the Center regarding disposition of the funds retained from Hewitt’s subaccount until every penny is expended.

Under Iowa Code Section 633A.4213, a trustee is required to provide an annual accounting sufficient to “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.” Iowa Code § 633A.4213. The District Court correctly concluded that the Center’s final accounting satisfies this requirement, and that no further accountings are owed to DHS because it’s interest as a beneficiary has been terminated. (*See* Summary Judgment Ruling, pp. 7, 8, (App. 170–171).

The Center first provided a Final Accounting on September 13, 2021. (September 13, 2021 Initial and Final Report, App. 94–102). On July 18, 2019, the Trust retained \$25,871.92. *Id.* In Paragraph 13 of the pleading provided with the Final Accounting, the Center stated, “The Trustee uses 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.” *Id.* In other words, the Trustee uses the trust’s

retained funds to pay for the permissible services that special needs pooled trusts were established to cover.

DHS asked the Court to order the Center to supplement its accounting. (October 18, 2021 DHS Objection to Supplement, App. 112–114). On October 7, 2021, the Center did so. (October 7, 2021 Supplement to Final Report, App. 105–111). The Final Accounting and the Supplemental Accounting included Schedules showing receipts, disbursements, and capital transactions for Hewitt’s subaccount. (September 13, 2021 Initial and Final Report, App. 112–114; October 7, 2021 Supplement to Final Report, App. 105–111). Additionally, Michelle Diebert, the Center’s President, provided a verified statement averring that the retained funds, at all times, remained with the trust in the master client account, which is used for the benefit of trust beneficiaries. (Verified Statement of Michelle Diebert, App. 163; *see also* Summary Judgment Ruling, pg. 8, App. 171).

Simply put, the Center has provided DHS with a sufficiently detailed accounting that conclusively demonstrates permissible retention of the funds. As the District Court found, the Center provided a sufficient accounting for the funds and there is no evidence of any kind of breach of duty as trustee

under Iowa law.² (Summary Judgment Ruling, pg. 8, App. 171). This Court should affirm the decision of the District Court and find that the Final Accounting provided sufficient detail, and that DHS is not entitled to further accountings.

Additionally, it is worth considering the legal awkwardness of the oversight sought by DHS. Some entity must manage the trust assets, and Congress assigned the role to nonprofits. *See Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (“We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.”). Congress could have created a government agency to do so or assigned responsibility to an existing agency (such as the Centers for Medicare & Medicaid Services or analogous state agencies); it could also have allowed a for-profit entity to manage the trusts (like Iowa’s privatized Medicaid management system). But Congress did not choose any of those alternatives.

Instead, Congress assigned the role to nonprofits. Then the regulations were written and enacted by a federal agency. *See* 42 U.S.C. § 1396p(d)(4)(C).

² The District Court’s statement regarding a potential breach may seem out of place. However, DHS has repeatedly suggested in lower court filings that the Center could possibly be engaging in some nefarious but undefined activity that can only be prevented by DHS oversight of the residual retention process. The District Court fully addressed this soft accusation by stating there is no evidence of wrongdoing by the Center.

Iowa's legislature and regulatory apparatus subsequently followed the same process and enacted a scheme that embodies the same criteria as the federal level. *See* 441 Iowa Admin. Code § 75.24(3)(c). In this way, the voting public had a voice in the process through their elected representatives at the state and federal level. Iowa DHS now unilaterally demands unending and intensive monitoring of the pooled special needs trusts which is not contemplated or described by the statute or the regulations.

DHS has not alleged, nor is there, a viable basis for this kind of sua sponte action by a state regulatory agency over a such a program. If the state of Iowa wishes to enact additional oversight over special needs trusts, then that is an issue for the legislatures, not for one executive branch agency acting on its own.³

CONCLUSION

For the above stated reasons, the District Court correctly held that: (1) the Center, as Trustee, was entitled to retain the residual funds from Mr. Hewitt's pooled special needs trust so long as the retained funds were used for the benefit of other beneficiaries; and (2) that the Center had provided a sufficient accounting to DHS under all applicable statutes and regulations,

³ Whether such a law would be compatible with federal law would depend on its content, but at least one appellate court has found that a state law on this issue was preempted by federal law because the statutes conflicted. *See Lewis*, 685 F.3d 325.

including Iowa Code § 633A.4213. The District Court committed no error at law, and this Court should affirm the District Court's Summary Judgment Ruling.

REQUEST FOR ORAL ARGUMENT

Appellees request to be heard at oral argument because this is an issue of first impression concerning a matter of significant importance to disabled Iowans.

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 5,186 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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Date: September 14, 2022

/s/ Elizabeth R. Meyer

Elizabeth R. Meyer, AT0010139

Jana Weiler, AT0010992

Elizabeth A. Etchells, AT0012670

DENTONS DAVIS BROWN PC

215 10th Street, Suite 1300

Des Moines, Iowa 50309-3993

Telephone: (515) 288-2500

Facsimile: (515) 243-0654

Email: elizabeth.meyer@dentons.com

jana.weiler@dentons.com

elizabeth.Etchells@dentons.com

ATTORNEYS FOR APPELLEES

CERTIFICATE OF FILING AND CERTIFICATE OF SERVICE

The undersigned certifies that on the 14th of September, 2022, the foregoing Appellee's Final Brief was filed with the Clerk of the Iowa Supreme Court by using the EDMS system and all persons who have filed appearances/attorneys of record will have service be accomplished by the EDMS system.

Thomas J. Miller
Attorney General of Iowa

Laura Feldman Kron
Assistant Attorney General
Hoover State Office Building 2nd Floor
Des Moines, IA 50319
Email: laura.kron@ag.iowa.gov

Benjamin Charles Chatman
Department Of Human Services
317 6th Avenue Suite 600
Des Moines, IA 50309
Email: bchatman@sumogroup.com

ATTORNEYS FOR PETITIONER-APPELLANT

/s/ Elizabeth R. Meyer
Elizabeth R. Meyer, AT0010139
Jana Weiler, AT0010992
Elizabeth A. Etchells, AT0012670
DENTONS DAVIS BROWN PC
215 10th Street, Suite 1300
Des Moines, Iowa 50309-3993
Telephone: (515) 288-2500
Facsimile: (515) 243-0654
Email: elizabeth.meyer@dentons.com
jana.weiler@dentons.com
elizabeth.Etchells@dentons.com

ATTORNEYS FOR APPELLEES