

IN THE IOWA SUPREME COURT

No. 22-1331

Scott County No. TRPR080347

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

STEVEN MULLER,

**APPEAL FROM THE IOWA DISTRICT COURT
FOR SCOTT COUNTY
THE HONORABLE PATRICK A. MCELYEA, DISTRICT JUDGE**

APPELLANT'S FINAL BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT ERRED IN FINDING THAT THE PLAIN LANGUAGE OF THE STATUTES GOVERNING POOLED SPECIAL NEEDS TRUSTS REQUIRE THE TRUSTEE TO PROVIDE FURTHER ACCOUNTING TO DHS OF FUNDS RETAINED FROM MULLER'S SUB-ACCOUNT.

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ROUTING STATEMENT

The Iowa Supreme Court should retain this case pursuant to Iowa Rule of Appellate Procedure 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

This case relates to the disposition of retained 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 Section 633C.1(7) and the requirements for the trustee to account for such funds under Iowa Code Chapter 633A and Iowa Code Chapter 633C.

Decedent Steven Muller (“Muller”) died on June 30, 2020. At the time of his death, Muller was a resident of Bettendorf, Iowa. (Petition, Appendix (“App.”) 7). Prior to his death, Muller executed a Joinder Agreement for the Iowa Pooled Trust, establishing a Trust subaccount. *See* 42 U.S.C. 1396p(d)(4)(C), Iowa Code Chapter 633C; 441 Iowa Administrative Code 75.24(3)(c); *see also* Joinder Agreement, App. 728. The Center for Special Needs Trust Administration (“the Center” or

“Trustee”), a 501(c)(3) nonprofit association, is the Trustee of the Iowa Pooled Trust. *See Joinder Agreement*, App. 728.

The Center provided annual reports to DHS regarding the trust. The last annual report filed before he died for the period ending August 31, 2019, showed that \$119,922.77¹ remained in Muller’s sub-account. (Petition, App. 7). Muller received medical assistance from the State of Iowa from August 1994 through his death in the total amount of \$741,845.65. *Id.*

On March 2, 2021, the Iowa Department of Human Services (“DHS”) filed a Petition to Invoke Jurisdiction Over Irrevocable Trust pursuant to Iowa Code Section 633C.1(7), Iowa Code Section 633C.4(2), and Iowa Code Section 633A.6201. The Trustee timely answered the Petition on April 29, 2021. (Answer, App. 82–85). Trial was scheduled for July 7, 2022. (December 20, 2021, Order Setting Trial, App. 91–94).

In the District Court proceeding, DHS requested that the Trustee file a Final Report and Accounting prior to trial. (Petition, App. 7–8). The Trustee did so. (September 2, 2021 Final Report, App. 96–139; October 7, 2021 Supplement to Final Report, App. 148–154). Prior to Muller’s death, the Center disbursed funds for various allowable services as described in an itemized sheet titled “Schedule B: Disbursements During Period” which the

¹ As explained on Schedule B of the Final Report and referenced by the District Court, there were valid disbursements of \$7,071.56 prior to the Trust’s retention of the remaining funds. *See* Final Report, Schedule B, App. 136.

Court describes as “precisely itemiz[ing] the principal disbursement expenditure, sorting by the date, name, and account, as well as the individual amount paid out for each separate disbursement.” (District Court Ruling on Parties Cross-Motions for Summary Judgment, July 18, 2022, p. 5, App. 714). The Center then retained the balance of the funds. (September 2, 2021 Final Report, App. 96–139; October 7, 2021 Supplement to Final Report, App. 148–154). DHS objected to the sufficiency of this filing, and the Court allowed the Trustee to file a Supplement to the Final Report and Accounting. DHS again objected to the document’s sufficiency.

Before a hearing was held on this issue, on December 31, 2021, the Trustee submitted a motion for summary judgment. DHS timely resisted the Center’s motion and filed a cross-motion for summary judgment. The Center timely resisted DHS’s motion. A remote hearing was conducted by Zoom on February 24, 2022, and the Honorable Marlita A. Greve entered her ruling on March 9, 2022. Judge Greve denied both motions for summary judgment, finding that genuine issues of material fact permeated the matter.

Following Judge Greve’s ruling, on April 13, 2022, the Court issued an order directing the Trust to file a corrected Final Report stating “where and what happened” to the funds in question. That same day, DHS requested that the Court order a date certain by which the Center had to file the

corrected Final Report. On April 20, 2022, DHS filed a motion to continue trial pending receipt of the corrected Final Report. DHS contemporaneously filed a Notice of Intent to File Written Application for Default directed to the Center. On April 21, 2022, the Court scheduled a hearing for May 5, 2022. The day before the hearing, on May 4, 2022, DHS filed a “Memorandum in Support of Motion to Set Date Certain and Notice of Default” that included existing but never-before-presented authority.

On that same day, the Trustee filed a motion agreeing to DHS’s request for a continuance of the trial and asking the Court: (1) to stay proceedings pending the outcome of an appeal in a factually identical Jasper County case, *In the Matter of the Medical Assistance Pooled Special Needs Trust of Scott Hewitt*, (2) in the alternative, to reconsider the summary judgment ruling, and (3) also in the alternative, to provide further instruction to the Trustee as to what specific information or documents would satisfy its supposed obligation under the relevant statutes and regulations. DHS resisted all three motions.

The Court held a remote hearing on May 5, 2022. After listening to the arguments of counsel, the Honorable Patrick A. McElyea ordered that the record be reopened for the purposes of a motion to reconsider the Court’s prior ruling considering the additional case law provided. The Court ordered

that the Trustee should provide additional briefing by May 13, 2022, with DHS's response to follow no later than May 20, 2022. Both parties so submitted.

On July 18, 2022, the Court entered its order denying Trustee's motion for summary judgment and granting DHS's motion for summary judgment. The Court found that the plain language of 42 U.S.C. §1396p(d)(4)(C)(iii) and 42 U.S.C. § 1396p(d)(4)(C)(iv) "permit a trust to retain, that is, to keep, funds in the trust following the death of the primary beneficiary, solely for the purpose of benefitting other disabled persons." (District Court Ruling on Parties Cross-Motions for Summary Judgment, July 18, 2022, p. 5, App. 713–725). However, the Court also stated that "Retention in and of itself is not an authorized use of funds." *Id.* at 718. The Court also explained that the State, as a Qualified Beneficiary, under the Iowa Trust Code and Iowa Code Section 633C.4(2), "is entitled to a proper accounting of the funds in the trust." *Id.* at 718–719. Specifically, "DHS is entitled to know whether the remaining \$115,890.98 has actually been spent on valid expenditures, such as medical bills for other disabled persons, and whether and to what degree the remaining corpus of the trust has not been spent on valid expenditures, and therefore remains principal of the trust to which the State of Iowa has a contingent remainder." *Id.* at 719.

The Court expressed concern for allowing a fiduciary under Iowa trust law, like the Center, to “promise” to manage the retained funds in accordance with the governing statutes and regulations. *Id.* at 718–719. The Court stated that allowing such a framework would allow a fiduciary to “escape their duty to account to a beneficiary by the mere claim that all funds in an account have been retained for a proper purpose” and that “it is difficult to see where a limiting principle could apply.” *Id.* at 720–721. The Court posited that such a ruling would be unworkable as a matter of Iowa trust law because fiduciaries might “substitute their annual accounting report with an affidavit promising the beneficiaries that the funds are being used properly” and questions whether that affidavit might “begin to run the statute of limitations on any breach of fiduciary duty claims arising within that period[.]” *Id.* The Court placed great emphasis on the fact that in this situation, the Center is the sole possessor of the funds at issue and therefore “proverbially holds all the cards,” meaning that DHS “may only vindicate its legal interest in the funds through such information as the Center is willing to distribute.” *Id.*

In short, the Court held that by retaining the funds in its master trust account, thereby comingling them with similar funds and making further tracking impossible, the Center violated its fiduciary duty to the State of

Iowa, a Qualified Beneficiary. The proper remedy, according to the Court, was payment of all funds improperly retained by the Center to DHS. The funds listed on the Final Accounting as retained by the trust total \$115,890.98. This appeal follows.

The Court also reached the issue of preemption, which was an early theory advanced by the Center. The Center is not appealing the Court's ruling regarding preemption.

STATEMENT OF THE FACTS

This matter arises out of the DHS's March 2, 2021, Petition to Invoke Jurisdiction Over Irrevocable Trust pursuant to Iowa Code Section 633C.1(7) and Iowa Code Section 633A.6201. (Petition, App. 7). Steven Muller ("Muller") died on June 30, 2020 in Bettendorf, Iowa. *Id.* Prior to his death, Muller executed a Joinder Agreement for the Iowa Pooled Trust, establishing a Trust subaccount. (Joinder Agreement, App. 728–755). The Center, as Trustee, accepted and signed the agreement on September 15, 2014. *Id.* at 734–735. The Joinder Agreement contains a provision in accordance with federal and Iowa law stating, "If any assets remain in the Beneficiary's separate Trust sub-account at the Beneficiary's death, such assets shall be deemed surplus Trust property and shall be retained by the Trust pursuant to all of the relevant and applicable provisions of 42 U.S.C. §

1396p including all related statutes, regulations, and/or rules.” *Id.* at 730 (Article 3.01). The Joinder Agreement goes on to state, “To the extent that any surplus Trust property is not retained by the Trust pursuant to paragraph 3.01 above, such property shall be distributed to each State in which the Beneficiary received government assistance, based on each State’s proportionate share of the total government assistance” received by the individual. *Id.* (Article 3.02). The agreement in this case expressly limits government reimbursement “to the extent that any such property is not retained by the Trust.” *Id.* at (Article 3.02). Following Muller’s death, the Trust moved the remaining funds in his sub-account into the Trust’s master account for beneficiaries. (Verified Statement of Michelle Diebert ¶¶ 3, 4, App. 327; *see also* Final and Supplemental Accountings, App. 96, 148).

After Muller died, DHS began attempting to recover funds from the pooled trust. (Petition, App. 7–81). On March 2, 2021, DHS 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 a Final Accounting as required, and, at the request of DHS, the Court ordered the Trustee to produce a supplemental accounting. (May 25, 2021 Motion to Require Trustee to File, App. 94–95; September 3, 2021 DHS Non-Consent and Motion for A More Specific Statement, App. 140–142). The Trustee did so, and DHS has objected to all such accountings as insufficient. (September 2, 2021 Final Report, App. 96–139; October 7, 2021 Supplement to Final Report, App. 148–154; October 18, 2021 DHS Objection to Supplement, App. 155–157). Following extensive briefing of the matter by both parties and two hearings, on July 18, 2022, the Court entered its order denying Trustee’s motion for summary judgment and granting DHS’s motion for summary judgment. (District Court Ruling on Parties Cross-Motions for Summary Judgment, July 18, 2022 , App. 713–725).

ARGUMENT

I. WHETHER THE DISTRICT COURT ERRED IN FINDING THAT THE TRUSTEE WAS REQUIRED TO PROVIDE FURTHER ACCOUNTING TO DHS OF FUNDS RETAINED FROM MULLER’S SUB-ACCOUNT IN ORDER FOR RETENTION TO BE PERMITTED.

Error Preservation:

This issue has been raised in filings and briefs by the parties and was addressed by the District Court in its order. Error has been preserved.

Standard of Review:

The correct standard of review is for correction of errors at law. *Garrison v. New Fashion Pork LLP*, 977 N.W.2d 67, 76 (Iowa 2022) (stating that standard of review on motions for summary judgment and for decisions regarding statutory interpretation is for correction of errors at law).

Merits:

A. The Court Erroneously Characterized the Trustee’s Retention of Funds from Muller’s Sub-Account in the Pooled Trust as an “Expenditure”

As a preliminary matter, the District Court applied a flawed framework to its disposition of this case by characterizing retention of funds from Muller’s sub-account in the pooled trust master account as an improper “expenditure” by the Center.

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 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. (*See* Joinder Agreement, “Establishment of Trust” clause (stating the pooled trust is created pursuant to 42 U.S.C. 1396p(d)(4)(C), which requires nonprofit status), App. 728). Second, separate accounts are maintained for each beneficiary of the pooled trust, with assets pooled for investment and management purposes. *Id.* (Establishment of Trust). Third, accounts are established by the appropriate persons solely for the benefit of individuals who are disabled. *Id.* (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 730 (Article 3.01).

The undisputed facts in this case established conclusively that the funds from Muller’s sub-account have simply been retained in the Trust’s master account that is used for the benefit of disabled individuals by the Center, as a qualified non-profit Trustee. (Verified Statement of Michelle Diebert ¶¶ 3, 4, App. 327; *see also* Final and Supplemental Accountings,

App. 96, 148). The Court's characterization of the retention as an expenditure is simply erroneous based on the record. This error underlies the remainder of the District Court's flawed analysis.

B. The District Court Erred in Determining that Retention by the Center Was Improper Without Further Accounting Being Provided to Iowa DHS.

The District Court erred when it determined that the Center is required to provide accountings to DHS specifically accounting for expenditure of funds after retention from Muller's sub-account into the pooled trust. Specifically, the District Court erroneously held that:

DHS is entitled to know whether the remaining \$115,890.98 has actually been spent on valid expenditures, such as medical bills for other disabled persons, and whether and to what degree the remaining corpus of the trust has not been spent on valid expenditures, and therefore remains principal of the trust to which the State of Iowa has a contingent remainder.

Id. at p. 7, App. 719.

In the District Court's view, to satisfy its duty to inform and account to DHS as a qualified beneficiary, the Trustee is required to provide a perpetual, specifically itemized accounting of retained funds up until their exhaustion. (District Court Ruling, pp. 5–9, App. 717–721). Appellant disagrees with this conclusion.

The District Court's conclusion is erroneous for two primary reasons. First, the District Court failed to acknowledge that under the statute the

Center has the right to retain funds. *See* Joinder Agreement, Article 3.01, App. 730. Second, the District Court erred in concluding the Center failed to comply with its fiduciary duties to inform and account under Iowa Code Section 633A.4213.

1. All Applicable Law Supports the Trustee's Retention of Funds.

Although the District Court seemingly recognized that the Trustee of a pooled special needs trust can retain funds after the death of a sub-account beneficiary for the benefit of other disabled individuals, the District Court erroneously concluded that further accounting to DHS is required in order for such retention to be appropriate in this case. There was no dispute in this case that DHS was a qualified beneficiary entitled to certain accountings under the Iowa Trust Code. There was also no dispute in this case on the point that retention by the Trustee is only proper where retained funds are used for the benefit of disabled individuals. The crux of the dispute was the extent of accountings required. The Court's conclusions on this point were erroneous.

The District Court failed to acknowledge the reality that DHS only has a right to reimbursement if the Center decides not to retain funds. Simply put, the State's contingent interest in the funds evaporates if the Center makes the decision to retain the funds. Once the funds are retained by

the Center, DHS is no longer a Qualified Beneficiary. All applicable law supports the Trustee's retention of the funds.

The Eighth Circuit Court of Appeals has summarized the nonprofit trustee's role as follows: “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)). The statute, as interpreted by the appellate court, allows the use of funds retained “by the nonprofit . . . for the benefit of other pooled-trust beneficiaries.” Thus, stating that the funds were retained is sufficient to satisfy the statutory requirements and reasonably inform DHS, as a qualified beneficiary, of the nature and amount of the trust property.

In the *Cox* case, the Iowa Supreme Court recognized and restated the plain language of the federal statute. *See generally Cox v. Iowa Dep't of Hum. Servs.*, 920 N.W.2d 545, 551 (Iowa 2018) (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. Even 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. No relevant portion of *Cox* is anything other than a correct restatement of the law.

In addition to the caselaw supporting the Trustee’s interpretation of the statute, the applicable Social Security Program Operations Manual System (“POMS”) supports a finding that the Center properly retained the funds. (*See* POMS Section 01120.203, App. 756). 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 Section 01120.203 (E)(2) at Note, App. 756; *see also* Petition at ¶ 17 (DHS citing Note and acknowledging pooled trust’s right to retain funds), App. 9). Furthermore, 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 Section 01120.203(E)(2).

It is also worth noting that the District Court’s perpetual accounting requirement is beyond the scope of the statute. Congress, through the statute and the accompanying regulations, set forth criteria by which the pooled trusts were to be governed. Those criteria are listed in 42 U.S.C. § 1396p(d)(4)(C). The plain language of the statute and the regulations do not mention (let alone require) a perpetual accounting requirement or state oversight of the kind DHS demands. *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.”). DHS has not alleged, nor is there, a viable basis for this kind of spontaneous state regulatory action over a federal program. If the state of Iowa wishes to enact additional oversight over special needs trusts, then that is an issue for the Legislature, not a remedy that should be created by the District Court.

2. The District Court Erred in Determining that The Trustee Did Not Satisfy Its Duty to Inform and Account to DHS.

Iowa Code Section 633A.4213 states, “A 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’ interests.” However, the statute leaves the “format and content of an accounting . . . within the discretion of the trustee, so long

as sufficient to reasonably inform the beneficiary of the condition and activities of the trust . . .” *Id.* at (6). The purpose of this requirement is to ensure all beneficiaries have access to “complete and accurate information as to the nature and amount of the trust property.” Restatement (Second) of Trusts § 173 (1959).

Here, the District Court acknowledged that the Final Accounting and the Supplemental Accounting included Schedules showing receipts, disbursements, and capital transactions for Muller’s subaccount. (September 2, 2021 Final Report, App. 96–139; October 7, 2021 Supplement to Final Report, App. 148–154; District Court Ruling on Parties Cross-Motions for Summary Judgment, July 18, 2022, p. 2, App. 714). However, the District Court then found that co-mingling the retained funds in the aggregated management and investment account made it impossible for the Center to fulfill its fiduciary duty. (District Court Ruling, pp. 7–10, App. 719–722). The Court erred in reaching this conclusion.

The Center’s obligation to use all funds for the benefit of disabled individuals applies equally across the pooled trust, regardless of where individual dollars are located. *See* 42 U.S.C. 1396p(d)(4)(C); Iowa Code Chapter 633C; 441 Iowa Administrative Code 75.24(3)(c); *see also* Joinder Agreement, App. 728). The statute and regulations contemplate both

individual sub-accounts and a pooled investment and management account. Given this structure, the funds are, in some sense, always held commingled. The structure itself is much like the organization of a bank, where funds belonging to individual accounts are regularly commingled, and in no way prevents the Center from fulfilling all fiduciary duties.

In Paragraph 14 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.” (October 7, 2021 Supplement to Final Report, App. 149). In other words, the Trustee uses the trust’s retained funds to pay for the services that special needs pooled trusts were established to cover. 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. 327). Simply put, the Center has provided DHS with a sufficiently detailed accounting that conclusively demonstrates retention of the funds in accordance with all applicable law.

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 Germain*, 503 U.S. at 253–54 (“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). 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.

II. THE DISTRICT COURT ERRED IN AWARDING THE RETAINED FUNDS TO DHS BECAUSE THAT REMEDY IS NOT AVAILABLE UNDER THE STATUTE.

Error Preservation:

This issue has been raised in filings and briefs by the parties and was addressed by the District Court in its order. Error has been preserved.

Standard of Review:

The correct standard of review is for correction of errors at law. *Garrison*, 977 N.W.2d at 76 (stating that standard of review on motions for summary judgment and for decisions regarding statutory interpretation is for correction of errors at law).

Merits:

The District Court also erred in the remedy that it imposed. After finding that the Center violated its fiduciary duties pursuant to Iowa Code Section 633A.4213, the District Court stated:

The final issue for the Court is determining the appropriate remedy. Pursuant to 42 U.S.C. §1396p(d)(4)(C)(iv), DHS is entitled to receipt of “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” as are not “retained by the trust.” In this case, the Center has not retained any funds in the trust, it depleted the trust completely in order to inject the funds into another master account. As this use of trust funds is improper, the Court finds that there are no funds properly retained by the trust, and the \$115,890.98 which was wrongfully expended from the trust as “retention” expenses must be paid out to DHS, who has expended well over that amount in medical assistance on behalf of Muller.

(District Court Ruling on Parties Cross-Motions for Summary Judgment, July 18, 2022, p. 11, App. 723). The Court states that it makes “entry of judgment in favor of DHS and in the amount of \$115,890.98.” *Id.* That statement is erroneous for two reasons.

First, the District Court is again making a distinction between the aggregated master account used for purposes of management and investing and the individual sub-accounts that exist during the primary beneficiary’s lifetime and alleging a transfer between accounts is not retention. No such valid distinction exists with regard to the Center’s responsibility to use both accounts for the benefit of disabled persons. Nowhere has the District Court or DHS pointed to statutory or regulatory language that limits permissible use of retained funds to medical benefits to a disabled beneficiary.

Second, and more importantly, the “judgment” the District Court has ordered is not available under the statute. The Iowa statute provides for the following remedies, none of which are a “judgment” in favor of DHS:

5. a. If the trustee has refused, after written request, to provide an accounting or other required notice under this section to a qualified beneficiary, the court may do any of the following:

- (1) Order the trustee to comply with the trustee’s duties under this section.
- (2) Assess costs, including attorney fees, against the trustee personally.

b. Except as provided in paragraph “a”, the only consequence to a trustee’s failure to provide the required accounting or notice is that the trustee shall not be able to rely upon the statute of limitations under section 633A.4504.

Iowa Code Section 633A.4213 (5). Thus, even if the Center has not provided a sufficient accounting, the only remedies available to the State are an order directing accounting on the retained funds, and the recovery of costs, including attorney fees, from the Center. A judgment is not the appropriate remedy. Only if DHS had pleaded and proved a breach of fiduciary duty would the DHS be entitled to damages for some wrongful action by the Center as Trustee. *Hamilton v. Mercantile Bank of Cedar Rapids*, 621 N.W.2d 401, 407 (Iowa 2001) (awarding damages for breach of fiduciary duty); *Midwest Mgmt. Corp. v. Stephens*, 353 N.W.2d 76 (Iowa 1984) (same). There is no evidence of any breach of fiduciary duties in this case. Thus, the State is not entitled to any damages and the remedy imposed by the Court is erroneous.

CONCLUSION

The District Court erred by (1) holding that the trusts’ retention of the primary beneficiary’s funds after death was impermissible; (2) holding that the Center had breached its fiduciary duties as trustee by failing to provide sufficient accountings to DHS; and (3) awarding DHS a remedy not

available under Iowa Code Section 633A.4213. Instead, the District Court should have entered summary judgment in the Trustee's favor on DHS's claims by concluding that (1) the Center was entitled to retain the funds from Muller's sub-account in the pooled trust and (2) the Center had provided sufficient accountings to DHS to satisfy the requirements of the Iowa Trust Code. For these reasons, this Court should reverse the District Court, and find that the Center was entitled to summary judgment in its favor.

REQUEST FOR ORAL ARGUMENT

Appellant requests 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 5,271 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman, size 14.

Date: December 8, 2022

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CERTIFICATE OF FILING AND CERTIFICATE OF SERVICE

The undersigned certifies that on the 8th of December, 2022, the foregoing Appellant’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.

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