

IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-1331
Scott County No. TRPR080347

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

Center for Special Needs Trust Administration, Inc.,
Appellant

v.

Iowa Department of Human Services,
Appellee.

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

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

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT CORRECTLY HELD THAT THE DEPARTMENT IS ENTITLED TO A PROPER ACCOUNTING AND THAT THE TRUSTEE FAILED TO PROVIDE SUCH ACCOUNTING.

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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Shelby Cty. Cookers, L.L.C v. Util. Consultants Int'l., Inc., 857 N.W.2d 186 (Iowa 2014)

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Iowa Code § 633A.4213(5)

Iowa Code § 633A.4213(6)

Iowa Code § 633C.1(7)

Iowa Code § 633C.2

Iowa Code § 633C.4(2)

Iowa Code § 633C.5(2)

II. WHETHER THE DISTRICT COURT PROPERLY DETERMINED THAT THE TRUSTEE COULD NOT AVOID ITS DUTY TO PROVIDE AN ACCOUNTING BY DEPLETING THE SUBACCOUNT AND PROMISING TO USE FUNDS FOR AN AUTHORIZED PURPOSE.

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Center for Special Needs Trust Admin., Inc. v. Olson, 676 F.3d 688
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Statutes and Rules:

42 U.S.C. § 1396p(d)(4)(C)

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42 U.S.C § 1396p(d)(4)(C)(iii)

42 U.S.C § 1396p(d)(4)(C)(iv)

Iowa Code § 633C.2

**III. WHETHER THE DISTRICT COURT PROPERLY
ENTERED A JUDGMENT IN FAVOR OF THE
DEPARTMENT FOR \$115,890.98.**

Cases:

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

Pfoser v. Harpstead, 953 N.W.2d 507 (Minn. 2021)

Shelby Cty. Cookers, L.L.C v. Util. Consultants Int'l., Inc., 857 N.W.2d 186 (Iowa 2014)

Statutes and Rules:

42 U.S.C. § 1396p(d)(4)

42 U.S.C. § 1396p(d)(4)(C)

42 U.S.C. § 1396p(d)(4)(C)(iv)

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., ba920 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 requirements in Iowa Code chapters 633A and 633C for a trustee to account for funds in a pooled special needs trust under 42 U.S.C. § 1396p(d)(4)(C); limitations related to the use and distribution of residual funds in such accounts; and consequences for failure to comply with applicable requirements.

Steven Muller received medical assistance from August 1994 until his death in June 2020. During that time, the Iowa Department of Human Services (the “Department” or “DHS”) paid \$741,845.65 for his care. (Petition, Appendix (“App.”) 007). On June 15, 2014, Mr. Muller transferred \$143,564.28 into a pooled special needs trust administered by the Center for Special Needs Trust Administration, Inc. (the

“Trustee”). The Trustee did not file annual accountings with the court as required by Iowa Code § 633C.4(2), but did provide copies directly to the Department. (App. 008; 096). The last annual report, covering the period of September 1, 2019, through October 1, 2020, reflected a beginning balance of \$119,922.77. (App. 134). After principal disbursements totaling \$7,071.56, a gain of \$3,039.77, and “Trust Retention” of the resulting \$115,890.98, no assets remained in the trust account as of October 1, 2020. (App. 136; 138).

On March 2, 2021, the Department filed a Petition to Invoke Jurisdiction, after the Center failed to do so as required by law. (App. 007–10). The Department requested, among other things, the court to order “the trustee to provide an accounting of how the funds have been or will be distributed since its last annual report . . . [and] any funds after the payment of properly retained funds be paid to DHS from the assets of the trust.” (App. 010). The Trustee filed an answer on April 29, 2021, requesting that the matter be dismissed. (App. 082–84).

On May 25, 2021, the Department filed a Motion to Require Trustee to File a Final Report and Accounting, citing Iowa Trust Code as the basis for the request. (App. 094–95). On September 2, 2021, the Trustee filed its Final Report, indicating that “[t]otal assets at the end

of the reporting period were \$0, as all assets had been retained by The National Pooled Trust, pursuant to the terms of The National Pooled Trust.” (App. 097). The Department filed a motion for more specific statement, requesting the court “order the Trustee to provide more information as to how the \$112,851.21¹ was distributed.” (App. 142). On September 3, 2021, the Court issued an order granting the Department’s request for a more specific statement, stating “[t]he Trustee shall provide additional information regarding distribution of the \$112,851.21.” (App. 143). Following the hearing on September 9, 2021, the Court entered an order stating that “the Trustee shall have 30 days from today’s date to file the supplemental accounting.” (App. 145).

On October 7, 2021, the Trustee filed a Supplement to Final Report. (App. 148–52). Instead of providing the requested information, the Trustee argued that it “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.” (App. 149). Modifying its previous

¹ This figure was subsequently modified to \$115,890.98, to reflect the gain of \$3,039.77, as shown on Exhibit E - Schedule D attached to the Trustee’s Final Report filed September 2, 2021. (App. 138).

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.” (App. 150). The Trustee disputed the Department’s position that retained funds can only be used for certain purposes and contested the extent of the Department’s beneficial interest in the trust. *Id.* The Department 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. 155-57).

On December 31, 2021, the Trustee filed a motion for summary judgment, with accompanying brief and statement of undisputed facts. (App. 160–278). The Department timely resisted and responded with its own motion for summary judgment, brief, and statement of undisputed facts. (App. 279–315). The Department 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 the Department and the Trustee reflecting this mutual understanding. (App. 279; 281–

84). The Department outlined the Trustee’s failures in providing the necessary information and requested “that a judgment be entered against the [Trustee] and in favor of the [Department] for \$112,851.21 if not paid by a date certain.” (App. 279–80).

The Trustee subsequently filed a brief in reply and resistance, along with a response to the Department’s statement of facts. (App. 316–27). As part of these filings, the Trustee submitted a Verified Statement of Michelle Diebert, President of the Trustee, “that the funds retained by the trust after the death of Steven Muller are now and have always been retained in the trust’s master client account.” (App. 327). 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.* The Department filed a reply brief, arguing that the funds of \$115,890.98 must be paid to the Department since the Trustee had failed to retain or use the funds in accordance with federal and state law, and otherwise failed to comply with the Court’s orders. (App. 334–35).

On February 24, 2022, the Court heard the parties’ cross-motions for summary judgment. (App. --). In its ruling dated March 9, 2022, the Court denied both motions. (App. 350). The Court found that

Iowa law authorized the Department to request a proper accounting and that “[t]he trust cannot claim by its own bad conduct in comingling the trust funds with another account that accounting is impossible.” (App. 349). The Court determined that there were clear fact questions as to what the Trustee did or did not do with the retained funds which precluded summary judgment for either party. *Id.* By separate order on March 9, 2022, the Court again directed the Trust to “file a corrected Final Report stating where and what happened to the funds in question.” (App. 336).

The Trustee did not file the report as ordered. On April 13, 2022, the Department filed a request for the Court to set a date certain by which time the Trustee must file the final accounting. (App. 352). After additional filings, the Court set the matter for hearing. (App. 355). Prior to hearing, the Department filed a memorandum in support of its motion and notice of default, citing National Foundation for Special Needs Integrity, Inc. v. Reese, 881 F.3d 1023 (7th Cir. 2018) as additional, not previously identified, authority for its position. (App. 360–63). The Trustee filed a responsive pleading, which the Department substantially resisted. (App. 364–69; 693–96).

After the hearing on May 5, 2022, the Court entered an order granting the Trustee’s motion to reopen the record for purposes of a motion to reconsider, instructing the parties to provide additional briefing. (App. 697). Both parties submitted briefs accordingly. (App. 699–703; 704–12).

On July 18, 2022, the Court entered an order granting the Department’s motion for summary judgment and denying the Trustee’s motion for summary judgment. (App. 723). The Court recognized that the trust was subject to the Iowa Trust Code generally and Iowa Code § 633C.4(2) specifically, which entitled the Department to a proper accounting. (App. 719). The Court held that a fiduciary such as the Trustee “may not 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.” (App. 721). Noting the failure of the Trustee to provide a sufficient accounting despite two separate court orders, the Court concluded that the Trustee violated its fiduciary duty by commingling the trust funds with the master account. (App. 723). “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.” Id. Since there were no funds properly retained by the trust,

the Court ordered entry of judgment for the Department in the amount of \$115,890.98, pursuant to 42 U.S.C. § 1396(d)(4)(C)(iv). *Id.* The Trustee timely filed a notice of appeal. (App. 726).

STATEMENT OF THE FACTS

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

ARGUMENT

I. THE DISTRICT COURT CORRECTLY HELD THAT THE DEPARTMENT IS ENTITLED TO A PROPER ACCOUNTING AND THAT THE TRUSTEE FAILED TO PROVIDE SUCH ACCOUNTING.

Standard of Review

The Department agrees that 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 Department agrees that the issue was raised in filings and briefs, and addressed by the District Court in its order. Error is preserved.

Merits

The District Court properly determined that the Department is entitled to a proper accounting of trust funds, and that the Trustee failed to provide the requisite information in this case. The District Court reached this conclusion based on the type of trust at issue, the governing federal and state law, the nature and extent of the Department's beneficial interest in the trust, and the Trustee's role as a fiduciary. For the reasons outlined in the District Court's order and as described below, this ruling should be affirmed.

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 the Department 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, the Department 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, the Department 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. The Department 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 federal law at 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) 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 Court recognized, and the parties agree, that the trust at issue in this matter is a pooled special needs trust established pursuant to 42 U.S.C. §1396p(d)(4)(C).

C. State Law Requirements. The pooled special needs trust constitutes 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.

In its ruling, the Court highlighted the statutory duties of the Trustee. (App. 716). Specifically, 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 the Department to cooperate with the trust “in determining the appropriate disposition of the trust” and the trustee to cooperate with the Department “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.”² 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

² 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 explicitly recognizes the Department as a beneficiary for purposes of exercise of the trustee’s fiduciary’s duties under Iowa Code § 633A. The District Court adopted this position in its ruling. (App. 719).

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).

As outlined by the District Court, these state law provisions recognize the Department’s status as a beneficiary of the trust and codify the ability of the Department to receive certain information by virtue of this position. They further limit the Trustee from taking certain actions which would conflict with the Department’s interest. The statute clearly contemplates oversight by the courts and cooperation between the Trustee and the Department regarding the flow of information and disposition of the trust funds.

Case law similarly recognizes the overlay of state trust law on the federal statutory trust requirements. The Third Circuit Court of Appeals explained that even though a state cannot modify the federal definition for a special needs trust as set forth in 42 U.S.C. § 1396p(d)(4), “[t]rusts are, of course, required to abide by a State’s general law of trusts.” Lewis v. Alexander, 685 F.3d 325, 344 (3rd Cir. 2012) (footnote 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.

D. The Trustee’s Role as a Fiduciary. The District Court also confirmed the accounting duties applicable to the Trustee by virtue of its role as a fiduciary. The District Court made clear that the duty to account is not “a mere formality that can be discarded when it proves inconvenient.” (App. 720). In stressing the relative power dynamic between the parties, the District Court explained:

The [Trustee], as the sole possessor of the funds at issue, proverbially holds all the cards. The State may only vindicate its legal interest in the funds through such information as the [Trustee] is willing to distribute. That is why the law imposes the duty to report on fiduciaries in the first instance

Id. The District Court expressed concern with the lack of a limiting principle and the idea that fiduciaries could discharge their duties simply by promising that funds are used properly. Id. The District Court concluded that special needs trusts are not exempt from the duty to report, and the Trustee in this matter was subject to this same requirement. Id.

In its brief, the Trustee suggests that the Department requests some level of heightened monitoring not contemplated by statute or regulations. (Appellant’s Brief, p. 22-23; 26). Not so. The requests made by the Department in this matter are standard for trusts within its purview. The Department seeks to provide the oversight plainly contemplated in federal statute and regulations as the single state agency responsible for operating the Medicaid program, and perform the monitoring explicitly detailed in Iowa Code §§ 633C.4(2) and 633A.4213. The Department simply asked the court to enforce the requirements already outlined in statute and recognized by other courts addressing similar questions.

The District Court correctly recognized the state’s ability to ensure funds are used appropriately requires the trustee to supply sufficiently detailed information in a timely manner. (App. 719). The accounting requirements at issue in this case fall squarely within the state’s retained authority to regulate trusts. Here, the Department is statutorily recognized as a beneficiary and explicitly entitled to cooperation from the Trustee to obtain information regarding the trust. The Department 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.

E. Trustee’s Failure to Provide Sufficient Accounting.

Despite several requests by the Department and two separate court orders, the Trustee did not provide a supplemental accounting. (App. 723). Instead, the Trustee continued to make 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, the Department seeks specific information to verify compliance with federal and state law. That would include “how or whether the funds were retained, invested, and managed in a segregated account” or attribution of “any investment income to the funds.” (App. 334–35). Under the terms of and consistent with the spirit of both state and federal law, the Trustee was required to supply sufficiently detailed information to the Department regarding the disposition of Mr. Muller’s pooled special needs trust funds. It did not do so.

II. THE DISTRICT COURT PROPERLY DETERMINED THAT THE TRUSTEE COULD NOT AVOID ITS DUTY TO PROVIDE AN ACCOUNTING BY DEPLETING THE SUBACCOUNT AND PROMISING TO USE FUNDS FOR AN AUTHORIZED PURPOSE.

Standard of Review

The Department agrees that 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 Department agrees that this issue was raised in filings and briefs, and addressed by the District Court in its order. Error is preserved.

Merits

The District Court properly concluded that the Trustee has authority to retain funds from the subaccount of a deceased pooled special needs trust beneficiary only so long as the Trustee uses such funds for authorized purposes. The mere claim that funds will be used for proper purposes does not discharge the Trustee's duties to the Department, including the duty to provide an accounting. (App. 718).

For the reasons outlined in the District Court’s order and as described below, this ruling should be affirmed.

The Trustee has acknowledged that “retention by the Trustee is only proper where retained funds are used for the benefit of disabled individuals.” (Appellant’s Brief, p. 20). This understanding reflects a comprehensive reading of the applicable federal statute,³ and each of the subparagraphs at 42 U.S.C. § 1396p(d)(4)(C)(ii), (iii), and (iv)—“a separate account is maintained for each beneficiary of the trust”; “solely for the benefit of individuals who are disabled”; “[t]o the extent . . . not retained by the trust, the trust pays to the State....” 42 U.S.C. § 1396p(d)(4)(C). State law similarly reflects a “sole benefit” standard. Iowa Code § 633C.2.

This is also consistent with case law which recognizes limitations on the use of retained funds. In Center for Special Needs Trust Admin., Inc. v. Olson, 676 F.3d 688 (8th Cir. 2012), the court noted that “[r]esidual amounts in the pooled trust after the beneficiary’s death do

³ This whole-text approach is consistent with principles of statutory interpretation employed by Iowa courts. See, e.g., Melby, 841 N.W.2d at 879 (“When construing statutes, we assess not just isolated words and phrases, but statutes in their entirety, and we avoid constructions rendering parts of a statute redundant, irrelevant, or absurd.”).

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*, 685 F.3d at 348–49 (emphasis added).

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 that after death, “the trustee will keep the funds or use the funds to reimburse the State for Medicaid expenses.” 920 N.W.2d at 559. The dissent further elaborated:

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). None of these cases provide support for the Trustee’s contention that it can avoid providing an accounting by commingling the subaccount funds with a master account. (Appellant’s Brief, pp. 21-22).

As properly reflected in the ruling by the District Court, the law must be understood to “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.” (App. 718). The Trustee “cannot, for example, use trust funds to its own benefit. Neither party disputes this.” (App. 717).

In evaluating these requirements, the District Court rightly concluded that “[r]etention in and of itself is not an authorized use of funds.” (App. 718). To find otherwise would go against the requirements in 42 U.S.C. § 1396p(d)(4)(C)(iii). Id. Regardless, the Trustee did not retain funds in Mr. Muller’s subaccount—the Trustee commingled the funds with the master account. (App. 723).

In response, the Trustee complains that the District Court takes too narrow of an approach to what constitutes a “benefit” to disabled persons, particularly as it relates to the ruling’s citation of one example of a permissible use of funds. (Appellant’s Brief, p. 28). Indeed,

throughout these proceedings, the Trustee has argued that “[i]t is axiomatic that the trust beneficiaries benefit from every single dollar the Center spends to maintain and administer the trust.” (App. 321). The Trustee does not attempt to distinguish this from the administrative costs charged by the trustee, or otherwise differentiate between the benefit to disabled beneficiaries—such as those amounts shown on the disbursement schedule of each annual report—versus the Trustee. (App. 101; 108; 115; 122; 129; 136).

The Trustee has repeatedly refused to explain exactly what funds are used for, making general assertions and promises not to use funds for any improper purpose. (Appellant’s Brief, pp. 18, 22). The very goal of these proceedings was for the Department to obtain sufficient information to verify that funds have been used for a permissible purpose. (App. 007–10). Instead of supplying this information, the Trustee proposes keeping funds in limbo and disbursing them without court review after the funds have been “retained.” This is not the process or framework envisioned by the statute. The Trustee’s statutory role—particularly its role as a fiduciary, as described in section I.D. above—does not give it authority to ignore requirements in

42 U.S.C. § 1396p(d)(4)(C) and Iowa Code chapters 663A and 633C.

The District Court ruling should be affirmed.

III. THE DISTRICT COURT PROPERLY ENTERED A JUDGMENT IN FAVOR OF THE DEPARTMENT FOR \$115,890.98.

Standard of Review

The Department agrees that 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 Department agrees that this issue was raised in filings and briefs, and addressed by the District Court in its order. Error is preserved.

Merits

The Department is entitled to reimbursement if the Trustee does not retain funds for authorized purposes—that is, for the benefit of disabled individuals. 42 U.S.C. § 1396p(d)(4)(C). The District Court concluded that there were no funds properly retained by the trust, and accordingly, funds improperly held by the Trustee must be paid to the

Department. (App. 723). The judgment entered in favor of the Department for \$115,890.98 should be affirmed.

Despite the Trustee's contention in its brief, applicable law does not support Trustee's retention of funds in this case. (Appellant's Brief, p. 20). In addition to the authorities cited above, which acknowledge limitations on the trustee's use of retained funds, there are also cases which specifically recognize the state's interest in residual funds. In a 2018 case, the Seventh Circuit Court of Appeals directly addressed whether the trustee of a pooled special needs trust was entitled to retain funds upon the beneficiary's death. Reese, 881 F.3d at 1023. The court understood as a basic principle that the rules on pooled special needs trust contemplate that Medicaid will be repaid. Id. at 1026. This is the benefit of the bargain for excluding such assets for Medicaid eligibility purposes. While the Reese case applied Indiana law to the terms of a specific trust, the foundational premise is relevant to the present case.⁴

⁴ Like in this case, the trustee in Reese transferred money out of the individual sub-account into other trustee accounts. It spent the funds, intending to avoid repayment to the state or the estate. Reese, 881 F.2d at 1029, fn 1.

Similarly, the Minnesota Supreme Court has recognized that federal law envisions payback to the state. Pfoser v. Harpstead, 953 N.W.2d 507, 522 (Minn. 2021). In response to the state’s concerns regarding the use of pooled special needs trusts to hide wealth for Medicaid eligibility purposes, the court highlighted the limitations on such trusts:

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.

Id. (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*”⁵ and reference to 42 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. These courts recognized that the intent of these provisions is not to diminish Medicaid’s interest in repayment.

⁵ 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*.’” (19th ed. 2010).

As discussed above, if residual funds are not used for an authorized purpose, the trustee cannot keep the funds and remain in compliance with federal and state requirements governing pooled special needs trusts. In such circumstances, the funds must be paid to the Department pursuant to 42 U.S.C. § 1396p(d)(4). Here, the Trustee depleted the trust subaccount and commingled funds in the master account. Since there were no funds properly retained in the trust, the Department is entitled to the residual amount, pursuant to federal law.

This is a separate issue than the failure to provide an accounting as required by state law, as suggested by the Trustee in its brief. (Appellant's Brief, p. 28-29). The judgment is the consequence of the Trustee depleting the subaccount by commingling the subaccount's funds with a master account. An accounting cannot be provided, but this is the result of the Trustee's actions in commingling funds and not the basis for the judgment. Since the funds were not retained in the subaccount when a Final Report was filed to determine the proper distribution for costs, fees, and retainage for any other disabled person's benefit, the funds must be paid to the residuary beneficiary—the Department. The judgment simply confirms that the Trustee is holding funds which must be paid to the Department.

CONCLUSION

For the foregoing reasons, the District Court properly concluded (1) that the Department was entitled to a sufficient accounting, which the Trustee failed to provide; (2) that the Trustee could not extinguish its duty to report by commingling the trust funds with the master account; and (3) that the \$115,890.98 depleted from the trust must be paid to the Department. The District Court's order should be affirmed.

REQUEST FOR ORAL SUBMISSION

The Department requests to be heard at oral argument because this is an issue of first impression which has statewide significance because of the implication to one of the funding mechanisms for the Medicaid program.

COST CERTIFICATE

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

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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DATED: December 14, 2022

/s/ Laura F. Kron

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