STATE OF MICHIGAN

IN THE CIRCUIT COURT OF THE COUNTY OF INGHAM

In The Matter of [redacted]

[redacted] Guardian, and
PATRICIA E. KEFALAS DUDEK,
Trustee,

Petitioner,

v

OPINION AND ORDER

DOCKET NO [redacted]

HON. THOMAS L. BROWN

MICHIGAN DEPARTMENT OF
HUMAN SERVICES, and JUDGE JUDITH
RALSTON ELLISON, Administrative Law Judge,

Respondents.

_______________________________________/

PRESENT: HONORABLE THOMAS L. BROWN
Visiting Circuit Court Judge

This Court, having reviewed Petitioner's Petition for Review and Brief in Support; Respondent's response thereto; Petitioner's Reply; all relevant documents and correspondence; having heard oral argument on July 25, 2007, and being fully apprised of the issues, states the following:

INTRODUCTION

FINDINGS OF FACT

This Administrative Appeal involves eligibility for Food Assistance Program ("FAP") benefits. '[redacted]') is a 22 year-old person with a disability, as defined by §1614(a)(3) of the Social Security Act, 42 USC §1382c(a)(3). [redacted] is a Medicaid recipient and is the beneficiary of a supplemental irrevocable special needs trust established in accordance with 42 USC §1396p(d)(4)(C) ("the Trust"). A $6,000 annual payment is made to the trust as the result of a personal injury settlement in [redacted]'s favor

The United States Congress created statutory provisions that allow disabled persons who fit within certain criteria, and who receive entitlement benefits, to transfer their own property or income into a special needs trust without adversely affecting eligibility for public assistance programs. One type of special needs trust is a "pay-over" trust created pursuant to 42 USC §1396p(d)(4)(C). The Trust at issue in this case is a pooled accounts, pay-over trust. It is a "pooled accounts" trust because it is established and managed by a nonprofit association, and a separate account is maintained for each beneficiary, but for purposes of investment and management of funds, the trust pools the accounts of several beneficiaries. It is a "pay-over" trust because upon the death of the beneficiary, any remaining funds in the trust will be "paid over" for the continuing use of the non-profit trustee. These pooled accounts, pay-over trusts enable qualified individuals to hold assets in trust when those assets would otherwise disqualify the person from eligibility for entitlement benefits. This exception was carved out to protect, provide for, and maximize the quality of life of disabled persons who have financial needs beyond essential food, shelter, and medical care.

On November 12, 2005, [redacted] applied to the Department of Human Services ("Respondent") for FAP benefits. On December 2, 2005, Respondent determined that Ian was eligible for benefits of $10 per month. In making its eligibility determination, Respondent calculated [redacted] unearned income at $1,236 per month. This calculation included $500 per month amount intended to represent 1/12 of the $6,000 annual payment to the Trust. On May 1, 2006, [redacted] guardian filed a Request for Hearing challenging the eligibility determination. On September 6, 2006, ALJ Ralston Ellison issued a written Hearing Decision affirming and upholding the determination, stating that, "the annual payment from [the Trust] for the benefit of [Ian] should be included in the FAP benefit budget as unearned income." [redacted] now asks this court to reverse the ALJ's decision, and enter an order requiring Respondent to re-calculate [redacted] FAP eligibility without the $6,000 annual payment to the trust.

OPINION

STANDARD OF REVIEW

The standard of review is found in MCL 24.306, which provides:

> Sec. 106. (1) Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:
> (a) In violation of the constitution or a statute.
> (b) In excess of the statutory authority or jurisdiction of the agency.
> (c) Made upon unlawful procedure resulting in material prejudice to a party.
> (d) Not supported by competent, material and substantial evidence on the whole record.
> (e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.
> (f) Affected by other substantial and material error of law.

"The judicial yardstick for assessing the validity of an administrative decision is whether not the decision is supported by competent, material, and substantial evidence." *Union Bank & Trust co v First Michigan Bank & Trust Co*, 44 Mich App 83 (1972). The agency's decision may only be reversed where the Court finds that it is contrary to law, or not supported by competent, material, and substantial evidence. *Trumble's Rent L Center v Employment Sec Com'n*, 197 Mich App 229, 233 (1992). Thus, this Court is not to displace the agency's choice between two reasonably differing viewpoints. *MERC v Detroit Symphony Orchestra, Inc.*, 393 Mich 166, 127 (1974). Substantial evidence is that which a reasonable mind would accept as adequate to support a decision. *In re Payne*, 444 Mich 679, 692 (1994). Where there is sufficient evidence to support the agency's findings, a reviewing court must not substitute its discretion for that of the agency, even if the court would have reached a different result. *Black v Dep't of Social Services*, 195 Mich App 27, 30 (1992).

CONCLUSIONS OF LAW

In their Brief in Support of the Petition for Review, Petitioner contends that the funds in the trust should not have been classified as unearned income for purposes of FAP eligibility. Petitioner contends that Respondent classified the $6,000 distribution to the Trust as unearned income pursuant to the definition of that term contained in 7 CFR §273.9. The ALJ reasoned that the section applied because "it contains all the allowable income exclusions." Petitioner maintains that the ALJ ignored one such exclusion, "third-party payments" under 7 CFR §273.9(c)(1)(vii). That section provides, "if a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded as income." Petitioner asserts that funds have *never* been paid directly from the trust to [redacted] the only payments made from the Trust are made to third party vendors. Petitioner contends that these third party payments are excludable because they are made from funds that are **not owed to the household**, and these kind of payments are specifically excluded from unearned income by 7 CFR §273.9(c)(1)(vii).

Petitioner next argues that the ALJ misinterpreted and misapplied the Program Eligibility Manual ("PEM") provisions intended to ease real-world applications of federal regulations. Petitioner contends that the ALJ referenced and relied upon various PEM provisions in determining that Trust funds should be included as unearned income. Petitioner maintains that the PEM section entitled "Trust Fund" provides clear support for the position that funds paid to the Trust should not be included as unearned income.

The section provides two basic rules. The first states, "Count payments from a trust to a beneficiary as unearned income." Petitioner again submits that no payments have been made to Ian, only to third parties. Thus, these payments should not be included as unearned income under this rule. The second rule states, "In addition, count any amount of trust income that the beneficiary can instruct the trust to pay him. It is the beneficiary's unearned income." Petitioner submits that there is simply no question that Ian cannot instruct the Trust or trustees to pay him anything. Petitioner asserts that he has no power to control, compel, or otherwise influence the disposition of trust funds.

In conclusion, Petitioner asks this court to reverse the ALJ's decision, and enter an order requiring Respondent to re-calculate Ian's FAP eligibility without the $6,000 annual payment to the trust included as unearned income. Petitioner asserts the decision is in violation of [redacted] constitutional or statutory rights, in excess of the authority of the agency, made upon unlawful procedure, not supported by substantial evidence, is arbitrary and capricious, and is affected by other error of law.

In their Response to Petitioner's Petition, Respondent asserts that Petitioner's discussion of the character and purpose of the Trust created under 42 USC §1396p(d)(4)(C) for Medicaid purposes is of no independent legal consequence to the analysis of whether payments into the Trust count as unearned income for purposes of FAP eligibility under the applicable federal statutes, regulations, and state policy. Respondent contends that this is not a Medicaid eligibility case, but a case involving FAP eligibility. Respondent maintains that Petitioner is muddying the water by focusing on 42 USC §1396p(d)(4)(C), and that the real focus should be on application of federal statutes, regulations, and State policy in determining Ian's unearned income.

Respondent asserts that the payments made from the Trust do not meet an exclusion for unearned income. Respondent contends that under 7 CFR §273.9(c)(1)(vii), the issue is twofold. First, the focus is whether the money used from the trust is "legally obligated and otherwise payable to the household" and "diverted by the provider of the payment to a third party for a household expense." Second, the issue is whether another person or entity "makes a payment to a third party on behalf of a household using funds not owed to the household."

Respondent argues that the monies are legally obligated to [redacted] Respondent states that the trustee/beneficiary relationship is a fiduciary relationship. Legal title to the trust assets rest with the trustee; equitable title to the trust assets rest with the beneficiary. Respondent maintains that the legal obligation is apparent because the trustee has made disbursements from the trust consistently in the past, and the Trust's own language indicates the funds can be paid directly to [redacted] Thus, Respondent contends the money is otherwise payable to the household under 7 CFR §273.9(c)(1)(vii). For these same reasons, Respondent asserts that the money is not being paid to a third party using funds that are not owed to the household. Respondent submits that the ALJ properly concluded the trust payments were not among an income exclusion, and that the decision was supported by substantial evidence.

As to the application of the PEM provisions, Respondent asserts that reading the policies together, the ALJ properly concluded the Trust money was includable as unearned income. First, Respondent contends the ALJ determined the Trust money was owed [redacted] Second, Respondent maintains there was no court order or legally binding agreement requiring the money to be paid to a third party to qualify under any exception. Finally, Respondent argues that the PEM provisions identify the specific scenario of direct payments to a beneficiary, and that such payments are unearned income. Respondent submits that the eligibility decision is supported by substantial evidence, and should be affirmed.

In their Reply Brief, Petitioner argues that although this is not a Medicaid appeal, 42 USC §1396p(d)(4)(C) is still relevant, as the purpose of [redacted] trust is to ensure that [redacted] continues to receive the maximum amount of needs based assistance while having available to him, in the sole discretion of the trustee, a supplemental source of funding to maximize his quality of life.

Petitioner asserts that if the Trustee were to undertake the actions suggested by Respondent, making payments directly to [redacted] the purpose of the Trust would be frustrated. Petitioner does not assert that 42 USC §1396p(d)(4)(C) is of "independent legal consequence," rather, Petitioner states that the Trust must be read together with the Federal provision, and that proper administration of the Trust is dependant on an understanding of 42 USC §1396p(d)(4)(C) and its underlying policy.

Petitioner returns to the unearned income issue. Petitioner asserts that the trustee cannot make a payment directly to the beneficiary if to do so would destroy the purpose of the Trust. In other words, the trustee could not make such a payment if to do so would affect [redacted] FAP eligibility. As to whether the money used from the trust is "legally obligated and otherwise payable to the household," Petitioner contends that Respondent misunderstands the fiduciary duty of the trustee. Petitioner submits that it would be contrary to the trustee's fiduciary duty to make a payment directly to [redacted] because to do so would frustrate the purpose of the Trust.

Next, Petitioner asserts that there is a court order or legally binding agreement requiring the money to be paid to a third party. The personal injury settlement is the court order requiring that payments be made to the Trust and never directly to [redacted] The Trust itself is a legally binding agreement requiring payments for Ian's benefit to be made directly to third parties. Petitioner asserts that the funds are for the benefit of [redacted] but are not owed to or directly payable to the household. Petitioner contends this is a meaningful distinction that Respondent is ignoring.

Finally, as to the PEM provisions, Petitioner asserts that while [redacted] may be able to *receive* funds directly from the Trust, he cannot *instruct* the trustees to distribute the funds directly to him. Thus, the provision stating, "In addition, count any amount of trust income that the beneficiary can instruct the trust to pay him. It is the beneficiary's unearned income" does not apply. Petitioner argues that the provision stating, "Count payments from a trust to a beneficiary as unearned income" is not applicable, because the Trust is specifically designed so as to protect [redacted] eligibility for public assistance, and that these types of payments could not be made by the trustee resulting in the frustration of the Trust's purpose.

This Court finds that the decision of the agency is not supported by competent, material, and substantial evidence. This Court agrees that that if the Trustee were to undertake the actions suggested by Respondent, making payments directly to [redacted] the purpose of the Trust would be frustrated. Furthermore, this Court finds that there is a court order or legally binding agreement requiring the money to be paid to a third party. The personal injury settlement is the court order requiring that payments be made to the Trust and never directly to [redacted] The Trust itself is a legally binding agreement requiring payments for [redacted] benefit to be made directly to third parties. Therefore, this Court finds that the Trust funds meet the PEM exception stating, "exclude any portion of a payment that a court order or other legally binding agreement requires sending directly to a persons' creditor or service supplier. This Court also finds that the provision stating, "In addition, count any amount of trust income that the beneficiary can instruct the trust to pay him. It is the beneficiary's unearned income" does not apply to the Trust funds at issue, because the beneficiary in this case cannot instruct the trust to pay him, as to do so would frustrate the stated purpose of the trust. Thus, the ALJ's finding that "there was no direction requiring the Trustee to send payment directly to a person's creditor or service supplier" was not supported by the evidence.

The ALJ's finding that "the Trustee had discretion to disburse income or the corpus of the Trust, to the claimant/Beneficiary in its complete and unfettered discretion" is not supported by the evidence. The Trust document specifically provides, "Their public and private assistance benefits shall not be made unavailable to [the beneficiary] or be terminated because of this Trust." This language can only be read to provide that the Trustee does not have complete and unfettered discretion. The language clearly states that benefits shall not be terminated because of the trust; therefore, the Trustee does not have discretion to make disbursements that would have the effect of terminating public benefits. For the same reasons, this Court finds the ALJ's statement that "It does not matter whether the Trustee makes a decision not to distribute funds to the claimant; under the Trust Agreement a distribution can be made to the claimant" was not supported by the evidence. Again, the Trust language clearly provides that a distribution may not be made to the beneficiary if to do so would cause public benefits to be terminated.

ORDER

NOW, THEREFORE, the decision of the ALJ below is **REVERSED,** and it is hereby **ORDERED** that Petitioner's FAP eligibility be re-calculated by Respondent Michigan Department of Human Services without the $6,000 annual payment to the trust included as unearned income.

IT IS SO ORDERED.

In compliance with MCR 2.602(A)(3), this Court finds that this decision resolves the last pending claim and closes the case.

Dated: 07 Aug 07

HON. THOMAS L. BROWN
Visiting Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I served a copy of the above Opinion and Order upon the attorneys/parties of record by placing said Opinion and Order in an envelope addressed to each and placing same for mailing with the United States Mail at Lansing, Michigan, on August 9, 2007.

Trinidad Morales

Trinidad Morales
Judicial Assistant

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