



SOCIAL SECURITY

MEMORANDUM

Date: November 27, 2001

Refer To:
SI-2-1-3

S2D5G6

To: District Manager
Sterling Heights, MI

From: Assistant Regional Commissioner
Management and Operations Support

Subject: SSI-Michigan--Review of the
Dated May 11, 2001)--REPLY

Pooled Trust,

(Your Faxed Request

We have reviewed the above named trust, and have determined that as written, the Pooled Accounts Trust of Springfield Housing Corporation, a Nonprofit Corporation, also known as The Pooled Accounts Trust of Springfield, Inc., would not be considered a resource under the SSI regulations in place prior to January 1, 2000 or as amended beginning January 1, 2000. While a specific claimant's trusts was submitted for review, this determination may be applied to all Pooled Accounts Trust of Springfield, Inc.

Background

Within the Pooled Accounts Trust of Springfield, Inc., individual trust sub-accounts are maintained for each disabled beneficiary who chooses to adopt the trust. However, the funds from each of these sub-accounts will be pooled for investment and management.

An individual establishes a sub-account and becomes a "Primary Beneficiary" by entering into a "Joinder Agreement," whereby the individual enrolls in and adopts the Pooled Trust Agreement. A disabled individual can use their own funds to establish a sub-account for themselves. Other individuals could also place funds or assets into trust for the disabled beneficiary.

The purpose of the trust is to provide for each beneficiary's supplemental care, and not to provide for a beneficiary's basic support and maintenance. The trustee has sole discretion to make payments or distributions to or for the benefit of a beneficiary. The trust documents state that the pooled trust and each sub-account are irrevocable, and a spendthrift provision provides that, to the extent permitted by law, a beneficiary cannot assign or transfer their interest in the trust. The trustee may terminate the trust if it becomes impossible or impracticable to carry out the trust's purposes.

The sub-account will terminate upon the death of the Primary Beneficiary. Any assets remaining in the sub-account after payment of certain expenses shall remain part of the Master Trust to be used for the benefit of the primary beneficiaries of other sub-accounts that are established under the Pooled Trust Agreement. To the extent that any funds remain in the sub-account, they would be available to repay the State for any assistance that had been provided to the Primary Beneficiary.

The Pooled Trust Agreement provides that the grantors or other contributors to the trust cannot revoke any trust established by virtue of the Joinder Agreement. The grantors also do not have the right or power to amend, reform, or revoke the Pooled Trust or any sub-accounts.

Status

Until January 1, 2000, the Social Security Act did not separately describe the resource Treatment, for SSI purposes, of property held in trust. Property is a resource if the individual owns and can convert it to cash to be used for their support and maintenance. Property that could not be liquidated was not a resource. SSA reviewed state property law to decide whether an individual owns the property and whether they had the right, authority, or power to liquidate the property.

Effective January 1, 2000, the Social Security Act as amended directs how to count property held in trust as a resource for SSI purposes. According to the Act as amended, most assets held in trust for individuals are generally going to be countable resources, even if state property law might otherwise exclude them, if any portion of the trust property could be used for the benefit of the eligible individual or his or her spouse. (P.L. 106-169 § 205, 113 Stat. 1822, 1833 (to be codified at 42 U.S.C. § 1382b(e)). The amended Act, however, further provides that property held in trust does not count as a resource if it is excluded from being a countable resource for Medicaid purposes. The amended Act provides that a revocable trust shall be a resource to the individual and an irrevocable trust will be a resource to the extent that a portion of the trust could be used for the benefit of the individual. However, this subsection shall not apply to a trust that is excluded from being counted as resources for the Medicaid program. Thus, trusts satisfying the requirements of section 1917(d) (4) (42 U.S.C. § 1396p(d) (4) are excluded as resources to the individual for SSI purposes. These amendments apply to trusts established on or after January 1, 2000. This pooled trust is excluded from being a countable resource for the Medicaid program under 1396p(d) (4) (C); therefore, it is excluded from being counted as a resource for SSI purposes.

Section 1917(d) (4) (C) of the Act, 42 U.S.C. § 1396p(d) (4) (C), excludes certain pooled trusts from being counted as resources to a Medicaid recipient. In order to be excluded, the trust must contain assets belonging to a disabled individual and must satisfy certain conditions. It must be established and managed by a nonprofit organization. A separate account must be maintained for each beneficiary of the trust, but for purposes of investment and management of funds, the trust may pool these accounts. Accounts in the

trust must be established solely for the benefit of the disabled individual by the individual or a parent, grandparent, legal guardian, or court. Finally, the trust must provide that amounts remaining in the beneficiary's account at death, if not retained by the trust, will be used to reimburse the State for expenditures made during the beneficiary's lifetime

The Pooled Accounts Trust of Springfield, Inc. satisfies the foregoing criteria. The trust is established and managed by a nonprofit organization. The trust provides for separate sub-accounts for each disabled beneficiary of the trust, but for purposes of investment and management of funds, the trust pools these accounts. The trust provides that sub-accounts will be established by the Primary Beneficiary or a parent, grandparent, legal guardian or court. The trust is established solely for the benefit of the disabled individual. Finally, the trust provides that amounts remaining in the beneficiary's account at death, if not retained by the trust, will be used to reimburse the State for expenditures made during the beneficiary's lifetime

Accordingly, under the new amendments to 42 U.S.C. § 1382b, funds in the Pooled Accounts Trust of Springfield, Inc. will not count as a resource to the disabled beneficiaries who adopt the trust agreement.

Summary

We have determined that the Pooled Accounts Trust of Springfield, Inc. should not be considered a resource to the individual beneficiaries. The trust satisfies the conditions of 42 U.S.C. § 1396p(d) (4) (C) and recent amendments to Title XVI indicates that such trusts are exempt from being counted as resources for SSI purposes.

When a trust is not a resource, income received from the trust may be unearned income to the SSI recipient, depending on the nature of the disbursements. Therefore, any disbursements made directly to a claimant/recipient would be countable as cash income, while disbursements that provide in-kind support and maintenance (ISM) would be countable subject to the presumed maximum value of ISM. In-kind income includes food, clothing, and shelter. Other disbursements, such as payments for medical care, are not ISM, and would not be income.

Questions/concerns regarding this response may be directed to John H. Williams, Program Expert, CRSI/SSI, at (312) 575-4015.


Donna Y. Mukogawa

cc: Area Director, Area III