

**Trusts & Estates
NEWS****WHEN WILL TRUST ASSETS BE CONSIDERED AVAILABLE ASSETS
WHEN APPLYING FOR MEDICAID IN CONNECTICUT?**

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A recent Connecticut Supreme Court decision, *Pikula v. Department of Social Services* (SC 19533; released May 10, 2016) [<https://www.jud.ct.gov/external/supapp/Cases/AR0cr/CR321/321CR48.pdf>], confirms the guidelines for determining if trust assets are considered “available assets” for purposes of Medicaid eligibility in the State of Connecticut.

The Court was to decide whether a testamentary trust established by a parent for the benefit of his daughters was to be considered a “general support” trust or a “supplemental needs” trust. Generally, assets held in a supplemental needs trust are not considered available assets in determining a beneficiary’s Medicaid eligibility, while assets held in trust for the general support of a beneficiary are considered to be available assets and thus “unprotected” under the Medicaid regulations.

In this case, the plaintiff-beneficiary (the “beneficiary”) entered a long-term care facility in March 2012 and applied for financial and medical assistance under Medicaid. At the time of the beneficiary’s application, she was a beneficiary of a testamentary trust established for her benefit under her late father’s Will in 1991. The trust value at the time of her application was approximately \$169,745.91. In May 2013, the Department of Social Services denied her application for Medicaid benefits on the ground that her assets, including the assets in the testamentary trust, exceeded the relevant asset limits for eligibility. The beneficiary unsuccessfully exhausted her administrative remedies of appeal and subsequently appealed her matter to the Superior Court, which ultimately dismissed her action. The beneficiary appealed from the Superior Court’s judgment of dismissal to the Appellate Court where it was later transferred to the Supreme Court.

The Supreme Court was guided by its holdings and the factors established in *Zeoli v. Commissioner of Social Services*, 179 Conn. 83 (1979) [<http://law.justia.com/cases/connecticut/supreme-court/1979/179-conn-83-2.html>], and *Corcoran v. Department of Social Services*, 271 Conn. 679 (2004) [<http://caselaw.findlaw.com/ct-supreme-court/1485827.html>] in determining whether the testamentary trust created by the decedent was a general support trust or a supplemental needs trust. The three factors the Supreme Court found persuasive were: (1) the amount and nature of the trustee’s discretion with regard to distributions of trust income and principal; (2) any limitations or guiding principles within which the trustee must operate; and (3) the factual circumstances surrounding the establishment of the trust, including the amount of trust property. These three factors are now the critical elements in determining whether trust assets are considered available within the context of Medicaid eligibility.

In the Pikula case, the language of the testamentary trust instructed the Trustee to only use as much income from the trust “as the [t]rustee may deem advisable to provide properly for [her] maintenance and support and may incorporate any income not so distributed into the principal of the fund at the option of the [t]rustee.” The Court interpreted this language to mean that the testator intended for the trustee to have complete discretion in determining what, if any, of the income was to be used for the beneficiary’s maintenance, and that the fact that the unused income was to be returned to principal further indicated that the testator did not intend to provide for the beneficiary’s general needs.

Furthermore, the language in Pikula’s testamentary trust provided that the trustee has “sole and absolute discretion” to make principal distributions to the beneficiary in an amount the trustee deems advisable “to provide adequately and properly for the support and maintenance of the [beneficiary], [and] any expenses incurred by reason of illness and disability.” The Court held that the fact that the limiting language of “support and maintenance” was followed or preceded by language allowing the trustee broad discretion rendered the trust a supplemental needs trust.

The Court then considered the factual circumstances surrounding the establishment of the trust, including the amount of the trust. At the time of his death, the testator had a relatively small estate comprised primarily of his real estate. After his primary residence was sold in 2012, the trust assets totaled \$169,745.91. The Court held that the assets in this trust would be quickly exhausted if they were applied to the expenses related to the beneficiary’s impairment for which she had sought residential placement, and as a result, the trust was not intended to be a general support trust for the beneficiary.

After the Court’s review of the trust using the three factors it established in Zeoli and Corcoran, it concluded that the trial court improperly dismissed the beneficiary’s appeal from the decision of the hearing officer, that the trust was, in fact, a supplemental needs trust, and that the assets were not available to the beneficiary for purposes of determining Medicaid eligibility.

The Pikula case establishes and confirms clear guidelines for determining whether a trust should be considered a “supplemental needs trust” or a “general support trust” in the State of Connecticut. If you have a loved one who may need to qualify for public benefits in the future, please contact one of our trusts and estates professionals to assist you with a strategy for addressing his or her eligibility for those benefits.

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