

DISTRICT COURT
DOUGLAS COUNTY
FILED

OF MINNESOTA DEC 15 2009

IN DISTRICT COURT

COUNTY OF DOUGLAS SEVENTH JUDICIAL DISTRICT

Court Administrator
[Signature]
Deputy

David Dziuk, by his attorney-in-fact,
Claudia Dziuk-O'Donnell,
Appellant,
v.

Court File No. 21-CV-09-1074

Minnesota Department of
Human Services and Douglas
County Social Services,
Respondents.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
ORDER FOR JUDGMENT,
AND JUDGMENT**

This matter came on for a hearing on October 14, 2009, before the Honorable Ann L. Carrott, at the Douglas County Courthouse in Alexandria, Minnesota. Attorney Laurie Hanson appeared with and on behalf of Appellant. Assistant Attorney General Patricia Sonnenberg appeared on behalf of the Minnesota Commissioner of the Department of Human Services.

Based on all of the files and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. This appeal is governed by Minnesota Statute section 256.045, subdivisions 7 and 8 (2009). The scope of this Court's review is governed by Minnesota Statute section 14.69 (2009).
2. The procedural history is as follows:
 - a. October 30, 2008 – Douglas County sent Appellant written notice indicating that Appellant was ineligible for a period under Medical Assistance Long Term Care because it had determined that the \$12,320 Appellant had deposited in a Minnesota Special Needs Pooled Trust for the benefit of Appellant in August 2008 along with a \$500 administrative fee was an uncompensated transfer.

- b. November 26, 2008 – Appellant filed an appeal to the Minnesota Department of Human Services (hereafter “DHS”).
 - c. January 6, 2009 – The Department Human Services Judge held a hearing regarding Appellant’s first appeal.
 - d. February 25, 2009 – The Human Services Judge issued her recommended order denying Appellant’s requested relief which was subsequently adopted as the Order of the Commissioner of Human Services on February 27, 2009.
 - e. March 30, 2009 – Appellant filed a Request for Reconsideration.
 - f. April 1, 2009 – The Commissioner of DHS denied Appellant’s Request for Reconsideration.
 - g. April 30, 2009 – Appellant timely filed notice of appeal with this Court.
 - h. August 19, 2009 – Appellant filed his memorandum of law.
 - i. September 11, 2009 – Respondent filed its responsive memorandum of law.
 - j. September 17, 2009 – Appellant filed his reply memorandum of law.
 - k. October 14, 2009 – The Court held a hearing.
3. Claudia Dziuk-O’Donnell is Appellant’s daughter and his attorney-in-fact.
 4. Appellant is an 83-year-old man with multiple sclerosis. Although he requires complete physical care due to the multiple sclerosis, he is still active mentally.
 5. Appellant is living in a nursing home which he was paying for with his own funds. Since his funds were dissipating, his daughter, Ms. Dziuk-O’Donnell, filed an application for Medical Assistance Long Term Care benefits.
 6. In August 2008, Ms. Dziuk-O’Donnell, as power of attorney for her father, transferred \$12,320 of Appellant’s money from Bremer Bank and deposited it into a Minnesota Special Needs Pooled Trust managed by Guardian and Protective

Services, Inc., a non-profit corporation. Ms. Dziuk-O'Donnell also paid \$500 of Appellant's money as an administration fee to Guardian and Protective Services, Inc. to enter into the pooled trust.

7. The parties do not dispute that the pooled trust is a qualified pooled trust which has the following characteristics:
 - a. The trust is irrevocable.
 - b. Disbursements from the trust are at the discretion of the trustee, Guardian and Protective Services, Inc.
 - c. Guardian and Protective Services, Inc., a non-profit association, established and manages the trust.
 - d. 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. These separate accounts are called "sub-accounts" in the trust.
 - e. A sub-account was established solely for the benefit of Appellant, who is disabled, by Appellant through Ms. Dziuk-O'Donnell, his attorney-in-fact.
 - f. 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.
8. Appellant transferred money into the pooled trust account so it could be used for needs which are in addition to Appellant's normal care needs, including things such as: a telephone; telephone bill; a television; cable television bill; books; magazine and newspaper subscriptions; food outside of the nursing home's food; handicap van transportation; clothing; haircuts; medical insurance premiums of \$800 per month; a

motorized wheelchair and maintenance; a manual wheelchair; hearing aids; donations; CDs; and DVDs.

9. Appellant receives social security disability payments and was determined to be disabled by the Social Security Administration in 1973.
10. If the transfer of assets penalty provision applies, the penalty period of ineligibility is 2.69 months.

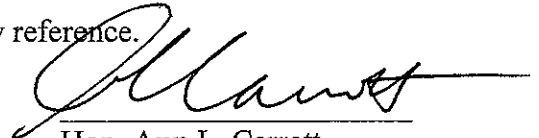
CONCLUSIONS OF LAW

1. The Minnesota Department of Human Services properly applied 42 U.S.C. section 1396p(c) to the transfer of funds by Appellant to a qualified pooled trust.
2. There is not substantial evidence in the record to support the Minnesota Department of Human Services' conclusion that Appellant transferred funds for less than fair market value.

ORDER

1. Appellant's requested relief is **DENIED**. The Minnesota Department of Human Services' Decision is **AFFIRMED in part** and **REMANDED in part**.
2. The Memorandum of Law below is incorporated by reference.

It is so ORDERED this 15th day of December, 2009.



Hon. Ann L. Carrott
Judge of District Court

LET JUDGMENT BE ENTERED ACCORDINGLY.


COURT SEAL

JUDGMENT

The above Order is hereby adopted as the Judgment on file herein.

WITNESS, the Honorable Ann L. Carrott, this 15th day of December, 2009.

BY THE COURT:



Court Administrator
4 *by Janice Broten, Deputy*

COURT SEAL

MEMORANDUM OF LAW

The issue before the Court is whether the transfer of Appellant's funds into a qualified pooled trust account is subject to the transfer of assets provisions in 42 U.S.C. §1396p(c).

1. Scope and Standard of Review

The scope of the Court's review is set forth in Minnesota Statute section 14.69 which states:

In a judicial review under sections 14.63 to 14.68, the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted;
or
- (f) arbitrary or capricious.

Minn. Stat. §14.69. Appellant argues that this Court should reverse the decision of the Commissioner of Human Services pursuant to sections 14.69(c) (the decision was made upon an unlawful procedure), 14.69(d) (the decision was affected by an error of law), 14.69(e) (the decision was unsupported by substantial evidence in view of the entire record as submitted), and 14.69(f) (the decision was arbitrary and capricious).

The standard of review in this case is de novo since it involves the interpretation of a statute which is a question of law. Wynkoop v. Carpenter, 574 N.W.2d 422, 425 (Minn. 1998). Any factual issues are reviewed using the substantial evidence test. Minn. Stat. §14.69(e). The substantial evidence test reflects the substantial judicial deference to the fact-finding processes of an administrative agency. Quinn Distributing Co. v. Quast Transfer, Inc., 288 Minn. 442, 448,

181 N.W.2d 696, 699 (Minn. 1970). “A decision is supported by substantial evidence when it is supported by (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” Minnesota Ctr. for Envtl. Advocacy v. Minnesota Pollution Control Agency, 644 N.W.2d 457, 464 (Minn. 2002) (citation omitted). Under the substantial evidence test, the reviewing court is to evaluate the evidence relied upon by the agency in view of the entire record as submitted. Cable Commc’ns Bd. v. Nor-West Cable Commc’ns P’ship, 356 N.W.2d 658, 668 (Minn. 1984). Where more than one inference may be drawn from the evidence, or where the record contains conflicting evidence supporting more than one conclusion, the reviewing court should uphold the agency’s decision. Pomrenke v. Comm’r of Commerce, 677 N.W.2d 85, 94 (Minn. Ct. App. 2004), rev. denied May 26, 2004; CUP Foods, Inc. v. City of Minneapolis, 633 N.W.2d 557, 562 (Minn. Ct. App. 2001), rev. denied November 13, 2001.

In order to determine the legislature’s intent, the principal method is “to rely on the plain meaning of the statute.” State v. Thompson, 754 N.W.2d 352, 255 (Minn. 2008). “Every law shall be construed, if possible, to give effect to all its provisions.” Minn. Stat. §645.16. When the words of a statute are inexplicit, the legislative intention may be ascertained by considering, among other things: “the occasion and necessity for the law; . . . the mischief to be remedied; . . . the object to be attained; . . . the consequences of a particular interpretation; . . . and; the legislative and administrative interpretations of the statute.” Id.

2. Medicaid Background

Congress enacted Medicaid as Title XIX of the Social Security Act in 1965 to ensure medical care, through public funding, to individuals who do not have the resources to cover

essential medical services. In re Estate of Barg, 752 N.W.2d 52, 58 (Minn. 2008) (citing Martin ex rel. Hoff v. City of Rochester, 642 N.W.2d 1, 9 (Minn. 2002)). Medicaid was intended to be the payor of last resort. Martin, 642 N.W.2d at 9 (citing H.R. Conf. Report No. 99-453, at 542 (1985)). The Federal Government and “participating states” jointly fund Medicaid. Barg, 752 N.W.2d at 58 (citing Harris v. McRae, 448 U.S. 297, 308 (1980)). Participating states are able to receive federal payments after enacting legislation and rules which are incorporated into their state medical assistance plans and are approved by the U.S. Secretary of Health and Human Services. 42 U.S.C. §1396a(a)-(b) (2000 & Supp. III 2003); 42 U.S.C. §1396 (2000). Each state administers its own program within the federal requirements, and at the federal level, the Centers for Medicare and Medicaid Services (hereafter “CMS”) administer the program and approve state plans. Barg, 752 N.W.2d at 58-59 (citing Martin, 642 N.W.2d at 9). One of the requirements imposed on state plans is that they must comply with the provisions of 42 U.S.C. section 1396p with respect to transfers of assets and treatment of certain trusts. 42 U.S.C. §1396a(a)(18).

A person must meet certain qualifications to receive Medicaid. Barg, 752 N.W.2d at 59. If the assets of a Medicaid applicant exceed the qualifying threshold, he or she must “spend down” assets until he or she is at or below the qualifying threshold. Id. “If a potential Medicaid recipient transfers assets below fair market value within a certain period of time before eligibility, the recipient is deemed ineligible for benefits for a time period mandated by statute.” Id. (citing 42 U.S.C. §1396p(c)). “This provision prevents people who are not needy from becoming eligible for Medicaid by transferring their assets away.” Barg, 752 N.W.2d at 59.

In 1986, Congress amended the Medicaid Act to enact 42 U.S.C. section 1396a(k) which had the purpose of closing “a loophole that had allowed individuals who were not otherwise

eligible for public assistance to shield their assets in trusts in order to receive Medicaid.” Ronney v. Dept. of Soc. Services, 210 Mich. App. 312, 318, 532 N.W.2d 910, 913-914 (1995). Congress amended the Medicaid Act again in 1993 with the Omnibus Budget Reconciliation Act (“OBRA”) of 1993. The 1993 amendments repealed section 1396a(k) and replaced it with section 1396p, which broadened the types of trusts that could be considered to preclude applicants from becoming eligible for Medicaid. 42 U.S.C. §1396p. The purpose of OBRA 1993 was to effect reductions in the cost of the Medicare program in an effort to repair an “ailing economy.” H.R. Rep. No. 103-111, at 3, *as reprinted in* 1993 U.S.C.C.A.N. 378, 381.

3. Statutes at Issue

a. 42 U.S.C. §1396p(c)

Subsection (c) of 42 U.S.C. section 1396p governs transfers of assets. In paragraph (1) of subsection (c), it states that the State plan must provide that if an institutionalized individual disposes of assets for less than fair market value on or after the look-back date, the individual is ineligible for specified medical assistance services for a specified time period. 42 U.S.C. §1396p(c)(1)(A). The look-back date in Appellant’s case would be 60 months before the first date on which he was both an institutionalized individual and applied for medical assistance under the Minnesota Medicaid plan. 42 U.S.C. §1396p(c)(1)(B)(i) & (ii). Subsection (c) also provides exceptions when the look-back period would not apply:

An individual shall not be ineligible for medical assistance by reason of paragraph (1) to the extent that

(B) the assets –

- (i) were transferred to the individual’s spouse or to another for the sole benefit of the individual’s spouse,
- (ii) were transferred from the individual’s spouse to another for the sole benefit of the individual’s spouse

- (iii) were transferred to, or to a trust (including a trust described in subsection (d)(4) of this section) established solely for the benefit of, the individual's child described in subparagraph (A)(ii)(II), or
- (iv) *were transferred to a trust (including a trust described in subsection (d)(4) of this section) established solely for the benefit of an individual under 65 years of age who is disabled (as defined in section 1382c(a)(3) of this title);*

42 U.S.C. §1396p(c)(2)(B) (emphasis added).

b. Minnesota Statute section 256B.0595 (2008)

Minnesota Statute section 256B.0595 (2008) governs transfer of assets. If the transfer of assets provisions in the section apply, Appellant would be subject to a 60 month look-back period. Minn. Stat. § 256B.0595, subds. 1(b) and 2(c) (2008). The statute has a similar exemption for disabled persons under the age of 65 as does the Federal statute:

An institutionalized person who has made, or whose spouse has made a transfer prohibited by subdivision 1, is not ineligible for long-term care services if one of the following conditions applies:

...

- (6) for transfers occurring after August 10, 1993, the assets were transferred by the person or person's spouse:
 - (i) into a trust established for the sole benefit of a son or daughter of any age who is blind or disabled as defined by the Supplemental Security Income program; or
 - (ii) *into a trust established for the sole benefit of an individual who is under 65 years of age who is disabled as defined by the Supplemental Security Income program.*

Minn. Stat. §256B.0595, subd. 4(6) (2008) (emphasis added).

c. 42 U.S.C. §1396p(d)

Subsection (d) of 42 U.S.C. section 1396p governs how the trust amounts are treated.

Paragraph (1) states that the rules specified in paragraph (3), subject to paragraph (4), shall apply to a trust established by an individual for purposes of determining an individual's eligibility for, or amount of, benefits under a state plan under the subchapter. 42 U.S.C. §1396p(d)(1).

Paragraph (3)(B) states the rules regarding eligibility for Medicaid when considering irrevocable trusts. 42 U.S.C §1396p(d)(3)(B). Paragraph (4) describes certain trusts, including irrevocable trusts, to which subsection (d) shall not be applied. 42 U.S.C. §1396p(d)(4). It states:

this subsection shall not apply to:

...

(C) A trust containing the assets of an individual who is disabled (as defined in section 1382c(a)(3) of this title) that meets the following conditions:

- (i) The trust is established and managed by a non-profit 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). This essentially states that a qualifying pooled trust is exempt from the provisions in subsection (d). The parties do not dispute and the Court agrees that the trust at issue is a qualified pooled trust.

d. Minnesota Statute section 256B.056 (2008)

Minnesota Statute section 256B.056 subdivision 3b(b) (2008) governs the treatment of trusts. Minn. Stat. §256B.056, subdivision 3b(b) (2008). According to the statute, trusts established after August 10, 1993 are treated according to section 13611(b) of OBRA 1993. Id. Section 1396p(d) was enacted by section 13611(b) of OBRA 1993 to govern the treatment of trusts. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, §13611(b), 107 Stat. 312, 625 (codified in 42 U.S.C. §1396p(d)). Therefore, the treatment of trusts in Minnesota is governed by 42 U.S.C. section 1396p(d). Minn. Stat. §256B.056 (2008).

4. Application of the Federal and State transfer of assets provisions

a. Application of section 1396p(d)

In this case, Douglas County correctly applied 42 U.S.C. section 1396p(d) as directed by Minnesota Statute section 256B.056 (2008) when considering how to treat Appellant's application for Medical Assistance. The Court finds that the trust in which Appellant deposited his assets was a qualified pooled trust because it meets the requirements of section 1396p(d)(4)(C). Since it is a qualified pooled trust, subsection (d) does not apply. 42 U.S.C. §1396p(d)(4)(C). Although subsection (d)(4)(C) states that subsection (d) does not apply to a qualified pooled trust, it never states that section 1396(c) does not apply to the qualified pooled trust. Id. Therefore, Douglas County was not precluded from applying section 1396(c) to the trust for which Appellant was a beneficiary.

Appellant argues that since section 1396(d)(3) does not say that a transfer of funds into a pooled trust is a "transfer," that any analysis under the section 1396(c) transfers of assets provisions is improper. (Oct. 14, 2009 Hearing.) However, the only authority Appellant provides to indicate that subsection (c) should not apply is HealthQuest #6046. HealthQuests are issued by an Agency financial worker, MinnesotaCare representative, or tribal eligibility worker. (See

HealthQuests #9227 and 9250.) They provide case-specific guidance and are not to be construed as legal advice. Id.

The wording of the statute compels the conclusion that the two subsections are not to be read and analyzed in a vacuum, since the exemption listed in 42 U.S.C. section 1396p(c)(2)(B)(iv) explicitly applies to trusts described in subsection (d)(4) (which describes qualifying pooled trusts, among others). In addition, CMS issued a memorandum in April 2008 which stated that a trust established for the benefit of a disabled individual over the age of 65 may be subject to penalty as a transfer of assets for less than fair market value. CMS also issued a letter in July 2008 which indicated that the transfer of asset penalties listed in subsection (c) apply to a transfer of funds into a pooled trust. These documents from CMS were issued before Appellant had transferred the funds into the account. The CMS April 2008 memorandum and the July 2008 letter are administrative interpretations of the statute which may be considered when interpreting the legislative intent of the statute. Minn. Stat. § 645.16(8) (2009). Although the HealthQuest #6046 supports Appellant's position, all other HealthQuests contained in the record¹ and the CMS April 2008 memorandum and July 2008 letter combined with the wording of the statute itself indicates that Douglas County was not limited to only applying section 1396p(d) and that the transfer of assets provisions in section 1396p(c) apply in this case.

¹ The information from the HealthQuests submitted into the record is as follows: (1) HealthQuest #5093 dated July 11, 2006 states: "You need to evaluate whether an improper transfer was made when the applicant transferred the proceeds from the sale of her life estate into the pooled trust." (2) HealthQuest #5909 dated November 22, 2006 states: "If a client qualifies for [long term care] services . . . you may need to evaluate whether an improper transfer was made when the applicant transferred funds into the trust." (3) HealthQuest #8793 dated July 18, 2008 states: "Placing an asset into a pooled trust for an individual age 65 and over is considered an uncompensated transfer . . . If the proceeds from the sale of this client's home are put into a pooled trust do the following: . . . determine a transfer penalty for the uncompensated transfer." (4) HealthQuest #8773 dated July 22, 2008 states: "[T]he placement of any assets into the pooled special needs trust for a person age 65 or older [is considered] to be an uncompensated transfer." (5) HealthQuest #9227 dated October 2008 states: "A transfer penalty for an uncompensated transfer begins the first month the client is requesting and is eligible to receive payment of [long term care] services if the transfer occurred on or after 2/8/06 and the client is requesting [medical assistance] payment of [long term care] services on or after July 1, 2006." (6) HealthQuest #9250 dated October 2008 states: "[E]ven though a pooled special needs trust can be established for a disabled person 65 or older, any assets placed in the trust by that disabled person would be considered an uncompensated transfer."

b. Application of section 1396p(c)

To be eligible for medical assistance without any look-back penalty, Appellant must have disposed of his assets for at least fair market value before the beginning of the 60 month look-back period. 42 U.S.C. §1396p(c)(1); Minn. Stat. § 256B.0595, subs. 1(b) and 2(c) (2008). Douglas County found that Appellant was eligible for medical assistance, but that due to his disposal of assets for less than fair market value after the look-back date, he was subject to a 2.69 month penalty during which he would not receive certain benefits from medical assistance.

Section 1396p(c)(2)(B) creates an exception when the penalty listed in section 1396p(c)(1) would not apply. 42 U.S.C. §1396p(c)(2)(B). If assets are transferred to a trust established solely for the benefit of a disabled individual under 65 years of age, the penalty in section 1396p(c)(1) does not apply. 42 U.S.C. §1396p(c)(2)(B)(iv). Appellant contends that this penalty does not apply. (Oct. 14, 2009 Hearing.) Appellant's theory is that section 1396p(c)(2)(B)(iv) only applies to trusts that are created to benefit a third party. Id. Appellant bases his contention on the language in section 1396p(c)(2)(B)(iv), which reads "an" individual instead of "the" individual. (Id.)

In the case where the words of a statute are inexplicit, the legislative intention may be ascertained by considering, among other things: (1) the occasion for the law; (2) the circumstances under which it was enacted; (3) the mischief to be remedied and the object to be attained; (4) the consequences of a particular interpretation; and (5) the legislative and administrative interpretations of the statute. Minn. Stat. §645.16 (2009).

i. Occasion for the Law

The occasion for the amendments to Medicaid in 1986 was to close "a loophole that had allowed individuals who were not otherwise eligible for public assistance to shield their assets in

trusts in order to receive Medicaid.” Ronney v. Dept. of Soc. Services, 210 Mich. App. at 318, 532 N.W.2d at 913-914 (1995). The 1993 OBRA further tightened Medicaid eligibility requirements in order to reduce Medicaid spending. H.R. Rep. No. 103-111, at 3, *as reprinted in* 1993 U.S.C.C.A.N. at 381.

Appellant urges the Court to interpret the statutes in a manner that would preclude the application of subsection (c) which contains the transfer of assets provisions and penalties. Such a provision has the effect of reducing the number of individuals to whom the penalty provisions would apply while at the same time increasing the amount Medicaid will spend. Such an interpretation runs contrary to the occasion for the law which was to *reduce* Medicaid spending. See Id. Conversely, the interpretation of the statute which applies the transfer of assets penalty provisions to specified individuals who fund a qualified pooled trust supports the occasion for the law.

ii. Circumstances Under Which it was Enacted

The Medicaid amendments at issue in this case were also enacted when the federal government was attempting to adjust the federal budget to remedy economic hardship. Id. The Court’s interpretation of the statute harmonizes with the circumstances under which the statute was enacted.

iii. Mischief to be Remedied and Object to be Attained

Medicaid sought to ensure medical care, through public funding, to individuals who do not have the resources to cover essential medical services through public funding. Barg, 752 N.W.2d at 58 (citation omitted). Medicaid was intended to be the payor of last resort. Martin, 642 N.W.2d at 9 (citing H.R. Conf. Report No. 99-453, at 542 (1985)). The Court’s interpretation of the statute conforms with the purpose of the statute which is to ensure that

Medicaid remains the payor of last resort and that it is available for individuals who do not have the resources to cover essential medical services. See Barg, 752 N.W.2d at 58 (citation omitted).

iv. Consequences of a Particular Interpretation

The Court has determined that subsection (c)(2)(B)(iv) applies to any individual, including both an individual who created a self-settled trust, such as Appellant, and also to an individual creating a trust for a third-party beneficiary – as long as the disabled individual creating the trust is under 65 years of age. Appellant’s argument for why subsection (c) does not apply in this case is that if Congress would have wanted to include an individual creating a self-settled trust, it would have written subsection (c)(2)(B)(iv) to read “the” individual instead of “an” individual. However, the consequence of Appellant’s interpretation is that if Congress were to have written the statute to read “the” individual in subsection (c)(2)(B)(iv), it would have completely eliminated the inclusion of *any* trusts that would be for third parties. The Court is not persuaded that Congress intended such a narrow reading of the statute. Instead, the Court is persuaded that the precise wording of subsection (c)(2)(B)(iv) to read “an” individual meant that *both* individuals who were the creators and the beneficiaries of trusts as well as individuals who were third party beneficiaries were to be included within the subsection.

v. Legislative and Administrative Interpretations

The CMS is the federal agency charged with administering the Medicaid program. 42 U.S.C. §1396a. The CMS issues a state Medicaid Manual to guide the states in administering Medicaid laws. In 1994 CMS revised its Medicaid Manual to update the Manual with the 1993 OBRA amendments to Medicaid. The 1994 revision to the Manual indicated in section 3259.7 that transfer penalties may apply to a trust established for the benefit of a disabled person over the age of 65. In addition, as previously noted, CMS issued a memorandum in April 2008 and a

letter in July 2008 regarding pooled trusts. The April 2008 memorandum indicated that “[a]lthough a pooled trust may be established for beneficiaries of any age, funds placed in a pooled trust established for an individual age 65 or older may be subject to penalty as a transfer of assets for less than fair market value.” (CMS April 2008 memo, ¶ 3.) The memorandum went on to state that “only trusts established for a disabled individual age 64 or younger are exempt from application of the transfer of assets penalty provisions (see section 1917(c)(2)(B)(iv) of the Act).” *Id.* The CMS July 2008 letter indicated that the transfer of asset penalties listed in subsection (c) apply to a transfer of funds into a pooled trust.

The Court considers the CMS April 2008 memorandum and July 2008 letter to be administrative interpretations of the statute, and has determined that the CMS April 2008 memorandum and July 2008 letter correspond with all other documentation presented by CMS and all other HealthQuests, except for HealthQuest #6046. (See footnote 1, p. 12.) HealthQuest #6046 is the only outlier from the CMS information and all of the HealthQuests before and after HealthQuest #6046². HealthQuests are used as guidance whereas information from CMS is considered to be an administrative interpretation. Consequently the Court has determined that HealthQuest #6046 was an anomaly and therefore is not persuasive as to the issue before the Court.

The Court also determines that the Commissioner of the Minnesota Department of Human Services did not change any prior rule when it issued its Manual Letter 17 which clarified the addition to the manual on pooled trusts. An agency is not deemed to have promulgated a new rule if its interpretation merely restates an existing policy, is consistent with the plain meaning of the rule, or is consistent with the regulation it implements. Nor-West Cable

² HealthQuest #6046 dated December 2006 states: “There is no age criteria for a pooled trust. There is no improper transfer if the pooled trust meets the [statutory criteria for a qualified pooled trust].”

Commc'ns P'ship, 356 N.W.2d at 667. The manual letter merely restates the existing policy and the Court finds that it is also consistent within the plain meaning of the rule and the regulation it implements.

5. Fair Market Value of the Assets Transferred

Since the Court has concluded that the transfer of assets provisions in subsection (c) apply, the Court must also find that the record contained substantial evidence that Appellant transferred his assets for less than fair market value before it can also apply the 2.69 month look-back penalty. 42 U.S.C. §1396p(c)(1)(A) & (B). The Court finds that there is not substantial evidence to support the conclusion regarding the fair market value of the assets. Marge Pasche, on behalf of Douglas County admitted at the hearing on January 6, 2009, that Douglas County did not perform an analysis of whether Appellant received adequate compensation when he placed his assets into the pooled trust. Although some HealthQuests suggest that this situation may be one where an uncompensated transfer is involved (see footnote 1 p. 12), HealthQuests are case-specific and therefore, this individual case should be analyzed to determine whether Appellant received fair market value for the assets he placed into the qualified pooled trust.

Respondent's argument—that Appellant has not received adequate value of the assets based on the fact that there has been no indication that money from the trust has paid for anything on behalf of Appellant thus far—is misplaced since the analysis must focus on whether, *at the time Appellant applied for Medical Assistance*, Appellant received less than fair market value for his assets transferred into the pooled trust. 42 U.S.C. §1396p(c)(1). Therefore the Court remands to determine whether Appellants assets were transferred for less than their fair market value at the time he applied for Medical Assistance.

6. Conclusion

The Court concludes that the Commissioner's decision to apply the transfer of assets provisions contained in section 1396p(c) is proper, was neither arbitrary and capricious nor based on an unlawful procedure or an error of law. However, the Court finds that there is not substantial evidence to determine whether Appellant received fair market value for the assets transferred and therefore the decision to apply the transfer of assets penalty was in error.

The decision to apply the transfer of assets provisions in subsection (c) is affirmed. This case is remanded to determine whether, at the time Appellant applied for Medicaid, he had transferred the assets into the pooled trust for less than fair-market value. Consequently, the Commissioner of Human Services' Decision is affirmed in part and remanded in part.

A.L.C.

A handwritten signature in black ink, appearing to be the initials 'ALC' with a stylized flourish.