

Commonwealth of Massachusetts
County of Worcester
The Superior Court

Civil Docket **WOCV2013-01929A**

RE: O'Leary v Thorn Director et al

TO: Patrick C. Tinsley, Esquire
Fletcher Tilton PC
370 Main Street
Worcester, MA 01608-1779

CLERK'S NOTICE

This is to notify you that in the above referenced case the Court's action on **09/16/2014**:

RE: Plff's. Alice O'Leary motion for judgment on the pleadings, deft's. meorandum in support of the final agency decision and in opposition to plff's. motion for judgment on the pleadings, Plff's. reply memorandum in support of motion for judgment on the pleadings & cert. of service

is as follows:

Motion (P#10) After hearing, Motion is ALLOWED. See memorandum of Decision for reasons. (William F. Sullivan, Justice). Notices mailed 9/18/2014

Dated at Worcester, Massachusetts this 18th day of September, 2014.

Dennis P. McManus, Esq.,
Clerk of the Courts

BY:

Joanne C. Herring
Assistant Clerk

Telephone: 508-831-2357 (session Clerk) or 508-831-2348

Copies mailed 09/18/2014

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION
No. WOCV2013-02013A

ALICE O'LEARY

vs.

KRISTIN THORN.

Director of the Office of Medicaid.
Executive Office of Health and Human Services

MEMORANDUM OF DECISION AND ORDER ON
PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

INTRODUCTION

This is an action for judicial review pursuant to G. L. c. 30A, § 14, whereby Plaintiff, challenges a decision by the Office of Medicaid's (hereinafter MassHealth) denial of her application for Medicaid benefits. The Plaintiff now moves for judgment on the pleadings pursuant to Mass. R. Civ. P. 12 c). For the following reasons, the Plaintiff's Motion for Judgment on the Pleadings is ALLOWED.

BACKGROUND

This case arises out of the denial of the plaintiff's application for Medicaid benefits. MassHealth found that the plaintiff's countable assets included the value of real estate that the plaintiff held in an irrevocable trust. MassHealth held that because the powers that the Trustee had under the trust, "render the trust principal within (plaintiff's) control", the trust property was considered a countable asset . The plaintiff challenges the determination that the trust principal is a countable asset.

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DISCUSSION

I. Standard of Review

Pursuant to G. L. c. 30A, § 14 (5), judicial review is limited to the administrative record. A party appealing a Department decision bears the heavy burden of demonstrating its invalidity. See *Springfield v. Dep't of Telecommunications & Cable*, 457 Mass. 562, 567-568 (2010). Further, courts must give due deference to the “experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.” G. L. c. 30A, § 14 (7). Conversely, a court may reverse, remand, or modify an agency’s decision if it determines that the substantial rights of a party were prejudiced because the agency’s decision was unsupported by substantial evidence or was arbitrary and capricious. See G. L. c. 30A, § 14 (7).

Substantial evidence is “such evidence as a reasonable mind might accept as adequate to support a conclusion.” G. L. c. 30A, § 1 (6); *Murphy v. Contributory Retirement Appeal Bd.*, 463 Mass. 333, 344 (2012). When applying the substantial evidence test, the court must take into account “the entire record,” including “both the evidence supporting the [Department’s] conclusion and whatever in the record fairly detracts from the weight of that evidence.” *Covell v. Dep't of Social Servs.*, 439 Mass. 766, 783 (2003). Additionally, a decision is arbitrary and capricious when there is no rational explanation that reasonable people might support. *Garrity v. Conservation Comm'n of Hingham*, 462 Mass. 779, 792 (2012). It is the sole province of the Department to judge the weight of the factual evidence presented. *Guarino v. Director of Div. of*

Employment Sec., 393 Mass. 89, 92 (1984). In other words, even if the court disagrees with a Department decision and would have ruled differently, it may not substitute its view of the facts as long as the Department's decision is supported by substantial evidence and was not arbitrary and capricious. See *Hanover Ins. Co. v. Comm'r of Ins.*, 443 Mass. 47, 50 (2004).

Mainly at issue in the present case is the interpretation of two seemingly ambiguous paragraphs in the applicable Trust. Article Second reads in part:

“The Trustee shall pay to the Grantors in equal shares all of the net income of the Trust, quarterly or more often.

After the death of the first Grantor to die, the Trustee shall pay to the surviving Grantor all of the net income of the Trust, quarterly or more often, **for the remainder of such Grantor's life.**

B. Until the death of the last surviving Grantor the Trustee may distribute part or all of the principal of this Trust to any persons (**other than the Grantors**) otherwise entitled to the assets of the this Trust after the deaths of the Grantors” (Emphasis added)

Article Seventh reads in part;

“The Trustee may apply any or all of the income or principal of any share or portion of the Trust to or for the benefit of any beneficiary and through such agencies as the Trustee deems advisable instead of paying it directly to the beneficiary or his or her guardian. “

The defendant argues that Article Seven allows the Trustee to transfer any portion of the income or principal of the trust at anytime for the benefit of a beneficiary, including the plaintiff, It is the defendant's position that this is the “peppercorn” which forms the basis for the proper denial of the plaintiff's application for Medicaid benefits.

The plaintiff argues that MassHealth improperly predicated their denial on just one Trust provision and that a proper review of the entire Trust document establishes that the asset is not countable and that the Trustee had no powers to transfer any of the principle to the benefit of the plaintiff.

In a case such as this, when there are ambiguous/contradictory grants of power to the Trustee, it is necessary to use the established rules of interpretation. When interpreting Trust language, a court or agency is not to read words in isolation and out of context. *Pond v Pond*, 424 Mass 894 (1997). The purpose is to discern the settlor's intent from the trust instrument as a whole and from circumstances known to the settlor at the time the instrument was executed. *Berman v Berman*, 379 Mass 506 (1980). Similarly, MassHealth must not look just to a specific trust provisions but rather to the instrument as a whole. *Doherty v. Director of Medicaid*, 74 Mass App Ct. 439 (2009). Consideration of the entire instrument may evince a general testamentary scheme which indicates that particular terms have a meaning different from that which they normally convey when standing alone. A certain isolated trust provision may be unenforceable because of impossibility or accomplishment or contradiction with other terms. Cases have indicated that they “tend to disfavor interpretations that would resolve ambiguities by attributing to the settlor an intention which as a practical matter is likely to benefit the taxing authorities and no one else.”, *Hellman v Hellman*, 433 Mass 590 (2001), *Putnam v Putnam*, 366 Mass 1974).

It is clear from a reading of the Trust that the grantors intended that only the income from the asset be available to them. Article Second could not be more clear in stating that the Trustee cannot distribute the principal to either of the grantors. The Trust takes great pains to ensure that there is no discretion to distribute principal to the grantors. It states that before the death of the last surviving grantor, the only beneficiary who can receive principal is someone other than the grantors.

Article Seventh when read in context of the entire Trust should not be interpreted to give

the Trustee the power to distribute the principle to the plaintiff. Article Seven seems designed to protect the Trustee in the event that he elects to make a payment to a third party for the benefit of a beneficiary. While, perhaps not the clearest of language, this Article does not seek to include a new power to the Trustee in contradiction to the specific instructions listed in Article Second. The Trust is set up with the clear intention to make only the principle available to the Grantors. The seeming contradiction between Article Second and Article Seven must be resolved in favor of Article Second. This is in keeping with the clear intention of the Grantors and consistent with the specific language and instructions given throughout the Trust document. The ambiguity raised by the defendant is not one that should have been relied upon to deny the plaintiff's application. This is not the type of "peppercorn" envisioned in case law supporting the denial of benefits.

Both parties have discussed the case of *Cohen v Commissioner of Medical Assistance*, 423 Mass 399 (1996) in their memoranda. In that case, all of the trusts examined by the court sought to limit the trustee's discretion as to how much could be distributed to the grantor. In the present case, Article Two makes it clear that no principle can be distributed to the plaintiff. The *Cohen* trusts allowed the trustee to give some of the principle to the grantor but limited the amount to an amount that would not jeopardize public assistance. The Trust in this case limits who the principle can go to (not the amount that can go) and does not allow any discretion to give any principle to the plaintiff. This is a significant and persuasive distinction.

The defendant also points to Article Nine to show another provision that justifies the denial of the plaintiff's application. Article Nine simply allows the plaintiff to substitute an asset in the trust for another asset of equal value. Article Nine does not expand the Trustee's powers of

distribution. Any assets substituted into the Trust under this provision are still bound by the restrictions listed in Article Two, discussed above.

Even giving the requisite due deference to MassHealth's decision, the decision to deny the plaintiff's application was not supported by substantial evidence and was an error of law. The actual language in the Trust establishes that the Trustee was not given any discretion to distribute the principle to the plaintiff and as such, the principle within the Trust should not have been considered a countable asset.

CONCLUSION AND ORDER

For the reasons stated, Plaintiff's Motion for Judgment on the Pleadings is **ALLOWED** .

Plaintiff's request for attorney's fees is DENIED,



William F. Sullivan
Justice of the Superior Court

Date: 9/18/14

**Commonwealth of Massachusetts
County of Worcester
The Superior Court**

CIVIL DOCKET# **WOCV2013-01929A**

RE: **O'Leary v Thorn Director et al**

TO: Patrick C. Tinsley, Esquire
Fletcher Tilton PC
370 Main Street
Worcester, MA 01608-1779

NOTICE OF JUDGMENT ENTRY

This is to notify you that a judgment in the above referenced action has been entered on the docket. A copy of the judgment is enclosed.

Dated at Worcester, Massachusetts this 18th day of September,
2014.

Dennis P. McManus, Esq.,
Clerk of the Courts

BY:.....
Joanne C. Herring
Assistant Clerk

Telephone: 508-831-2357 (session Clerk) or 508-831-2348

Commonwealth of Massachusetts
County of Worcester
The Superior Court

CIVIL DOCKET# WOCV2013-01929

Alice O'Leary

vs

Kristin Thorn, Director of the Office of Medicaid,
Executive Office of Health and Human Services

JUDGMENT

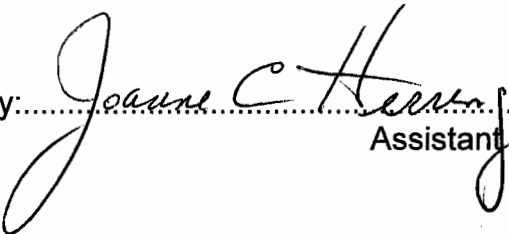
This action came on before the Court, William F. Sullivan, Justice, presiding, upon Motion of the plaintiff for Judgment on the Pleadings, and after hearing and pursuant to the Court's Memorandum of Decision and Order,

It is **ORDERED** and **ADJUDGED** as follows:

1. That judgment is hereby entered declaring that the plaintiff Alice O'Leary is eligible for MassHealth long-term care benefits as of February 26, 2013.
2. That judgment is hereby entered declaring that the assets of the Trust are not countable for purposes of determining the plaintiff's eligibility for long-term care benefits; and
3. This judgment is entered with costs as provided by law, and without attorney's fees.

Dated at Worcester, Massachusetts this 18th day of September, 2014.

Dennis P. McManus, Esq.,
Clerk of the Courts

By: 
Assistant Clerk

Copies mailed:

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