

STATE OF MINNESOTA
COUNTY OF CROW WING

DISTRICT COURT
NINTH JUDICIAL DISTRICT

Beth Braland,

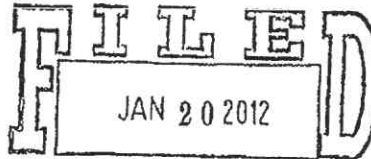
Appellant,

Court File No. 18-CV-11-2249

vs.

Commissioner of the Minnesota
Department of Human Services,

Respondent.



ORDER

Bonnie E. LeCocq
Court Administrator
Crow Wing County

The above-entitled matter came before the Honorable David J. Ten Eyck, Judge of District Court, Ninth Judicial District, on November 2, 2011.

Paul J. Stier, Attorney at Law, appeared on behalf of the Appellant.

Corrie A. Oberg, Assistant Attorney General, appeared on behalf of the Respondent.

Based upon the file, the record, arguments of counsel, and all proceedings and submissions herein, **THE COURT HEREBY MAKES THE FOLLOWING:**

ORDER

1. The order of the Commissioner of Human Services in this matter is hereby VACATED, and this matter is hereby REMANDED for further consideration consistent with the attached memorandum.
2. The attached memorandum is made a part hereof.

Dated: JANUARY 20, 2012


David J. Ten Eyck
Judge of District Court

MEMORANDUM

I. SUMMARY OF THE FACTS

On January 18, 2010, Appellant created an irrevocable inter-vivos trust for the benefit of her children. To this trust, she made a gift of \$108,000, and from the trust she purchased a \$62,000 promissory note.¹ Appellant later applied to Crow Wing County for medical assistance and received a denial on May 26, 2010. The County listed a reason for the denial that the trust at issue, by operation of Minnesota law, must be considered a revocable trust, and therefore counted as assets for the purposes of determining eligibility for medical assistance. On appeal, the Department of Human Services Judge affirmed, citing Minnesota Statutes Section 501B.895 for the proposition that the trust must be considered revocable. After the Department of Human Services declined to reconsider that decision, an appeal to this court followed.

II. ANALYSIS

Minnesota Statutes Section 501B.895(b), in relevant part, states:

When a state or local agency makes a determination on an application by the individual or the individual's spouse for payment of long-term care services through a Minnesota public health care program pursuant to chapter 256B, any irrevocable inter-vivos trust or any legal instrument, device, or arrangement similar to an irrevocable inter-vivos trust created on or after July 1, 2005, containing assets or income of an individual or an individual's spouse, including those created by a person, court, or administrative body with legal authority to act in place of, at the direction of, upon the request of, or on behalf of the individual or individual's spouse, becomes revocable for the sole purpose of that determination.

¹ The promissory note is the subject of additional litigation and is not at issue before this court.

As Appellant's inter-vivos trust was created after July 1, 2005, there is no dispute that this provision applies to the trust at issue. However, Appellant asserts that this provision is invalid because it is unconstitutionally overbroad and vague and also preempted by federal Medicaid laws. Following the doctrine of constitutional avoidance, this Court first examines the issue of preemption, and resolves the case that ground.

Federal law governing state Medicaid programs makes clear that they must have income eligibility requirements that are no more restrictive than those set forth in federal law. 42 U.S.C. § 1396a(a)(10)(C)(i)(III); *Schweiker v. Gray Panthers*, 453 U.S. 34, 36-37 (1981). In addition, federal law requires that state Medicaid plans "comply with the provisions of [42 U.S.C. § 1396p] with respect to liens, adjustments and recoveries of medical assistance correctly paid, transfers of assets, and treatment of certain trusts." 42 U.S.C. § 1396a(a)(18). The relevant section of 42 U.S.C. § 1396p reads:

In the case of an irrevocable trust--

(i) if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income--

(I) to or for the benefit of the individual, shall be considered income of the individual, and

(II) for any other purpose, shall be considered a transfer of assets by the individual subject to subsection (c) of this section; and

(ii) any portion of the trust from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of subsection (c) of this section, and the value of the trust shall be determined for purposes of such subsection by including the amount of any payments made from such portion of the trust after such date.

42 U.S.C. §1396p(d)(3)(B). The state rule mandates that all irrevocable inter-vivos trusts “become revocable” and are thus considered available assets for the purpose of eligibility determination. The federal rule states that irrevocable trusts should only be considered available in some specific circumstances. Thus, it is clear that the state rule is more restrictive than the federal rule, and is therefore in conflict with 42 U.S.C. § 1396a(a)(10)(C)(i)(III) and 42 U.S.C. § 1396a(a)(18).

When federal and state law conflict, this Court must determine if the state law has been preempted. The Minnesota Supreme Court recently addressed preemption in the Medicaid context in *In re Estate of Barg*, 752 N.W.2d 52 (2008). In that case, the court made clear that there are three possible ways federal law can preempt state law: with express language; by occupying the field; and “where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress ‘left no room’ for supplementary state regulation.” *Id.* at 63 (internal quotation omitted). The court found that it was the third type of preemption that was at issue in the Medicaid context, where federal law permits and even requires state action.

The Minnesota Supreme Court went on to explain that this type of conflict preemption exists when “compliance with both state and federal laws is impossible, or when the state law is an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Id.* at 64 (internal citations and quotations omitted). In *Barg*, the Court determined that the Minnesota statutes at issue in that case, which regulated how the property of married couples was considered for Medicaid purposes, were partially preempted by federal law.

Applying the principles laid out by the Minnesota Supreme Court in *Barg* to this case, it is clear that Minnesota Statutes Section 501B.895(b) is preempted by federal law. Section 501B.895(b) requires that all irrevocable inter-vivos trusts “become revocable” and are thus considered available assets for the purpose of eligibility determination. The federal rule states that irrevocable trusts should only be considered available in some specific circumstances. This is in direct conflict with 42 U.S.C. § 1396a(a)(10)(C)(i)(III), which require state eligibility requirements to be no more restrictive than the federal requirements, and 42 U.S.C. § 1396a(a)(18), which requires states to follow the federal provisions with respect to trusts.

The Respondent argues that no conflict exists, because the federal statute does not define the term “irrevocable trust.” Thus, Respondent argues, states are free to define different types of trusts as they see fit, without running afoul of the federal statute. This argument is unpersuasive. It is certainly true that trusts have traditionally been and still are an area governed by state law. However, certain basic concepts, such as the definition of “irrevocable trust” have become so entrenched in the law, that to allow their redefinition in this way is almost inconceivable. Even accepting that the state has the power to redefine an irrevocable trust as revocable, what the state has done here is to redefine the meaning of “irrevocable trust” only in the Medicaid context. This appears to be an attempt to avoid the explicit requirements of 42 U.S.C. § 1396p. This sort of redefinition is unquestionably an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Therefore, this Court has no choice but to find the Minnesota statute preempted.

The Respondent also emphasizes the deference due to administrative agencies in their decision making and interpretations of their governing statutes. *See, e.g., Reserve Mining Co. v. Herbst*, 256 N.W.2d 808 (Minn. 1977); *Mammenga v. State Dep't of Human Servs.*, 442 N.W.2d 786 (Minn. 1989). However, the question presented by this case is a pure question of law, and a complex question dealing with the interaction of laws from multiple levels of government. Questions of this type are properly addressed by the courts, and this Court sees no reason to defer to the Respondent's opinion in this case.

As we have decided that the state statute is preempted by the federal statute in this matter, the next logical question is if, under the federal rule, the trust in this case should be considered an asset for the purposes of determining eligibility. Finding the record on this point sparse, this Court remands this matter to the Department of Human Services to make such a determination.

III. CONCLUSION

As this Court has found the statute relied upon by the agency to be preempted by federal law, this Court finds the decision below to have been based upon an error of law, which is grounds for this Court to reverse or modify it. Minn. Stat. § 14.69. This Court therefore vacates and remands this matter to the Department of Human Services.

D.J.T.

501B.895 PUBLIC HEALTH CARE PROGRAMS AND CERTAIN TRUSTS.

(a) It is the public policy of this state that individuals use all available resources to pay for the cost of long-term care services, as defined in section 256B.0595, before turning to Minnesota health care program funds, and that trust instruments should not be permitted to shield available resources of an individual or an individual's spouse from such use.

(b) When a state or local agency makes a determination on an application by the individual or the individual's spouse for payment of long-term care services through a Minnesota public health care program pursuant to chapter 256B, any irrevocable inter-vivos trust or any legal instrument, device, or arrangement similar to an irrevocable inter-vivos trust created on or after July 1, 2005, containing assets or income of an individual or an individual's spouse, including those created by a person, court, or administrative body with legal authority to act in place of, at the direction of, upon the request of, or on behalf of the individual or individual's spouse, becomes revocable for the sole purpose of that determination. For purposes of this section, any inter-vivos trust and any legal instrument, device, or arrangement similar to an inter-vivos trust:

- (1) shall be deemed to be located in and subject to the laws of this state; and
- (2) is created as of the date it is fully executed by or on behalf of all of the settlors or others.

(c) For purposes of this section, a legal instrument, device, or arrangement similar to an irrevocable inter-vivos trust means any instrument, device, or arrangement which involves a grantor who transfers or whose property is transferred by another including, but not limited to, any court, administrative body, or anyone else with authority to act on their behalf or at their direction, to an individual or entity with fiduciary, contractual, or legal obligations to the grantor or others to be held, managed, or administered by the individual or entity for the benefit of the grantor or others. These legal instruments, devices, or other arrangements are irrevocable inter-vivos trusts for purposes of this section.

(d) In the event of a conflict between this section and the provisions of an irrevocable trust created on or after July 1, 2005, this section shall control.

(e) This section does not apply to trusts that qualify as supplemental needs trusts under section 501B.89 or to trusts meeting the criteria of United States Code, title 42, section 1396p (d)(4)(a) and (c) for purposes of eligibility for medical assistance.

(f) This section applies to all trusts first created on or after July 1, 2005, as permitted under United States Code, title 42, section 1396p, and to all interests in real or personal property regardless of the date on which the interest was created, reserved, or acquired.

History: 2005 c 155 art 3 s 7; 1Sp2005 c 3 art 11 s 6; 1Sp2005 c 4 art 5 s 19

2013 Minnesota Statutes

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History: 2005 c 155 art 3 s 7; 1Sp2005 c 3 art 11 s 6; 1Sp2005 c 4 art 5 s 19