Medicaid Eligibility and Trust Beneficiaries: The Benefits and Pitfalls of Multiple Beneficiaries

By John D. Dadakis and Faith L. Carter

A man in his 40s is diagnosed with a debilitating and terminal illness. The man’s doctors tell him that he can expect to live for five to 10 more years. However, he will require daily medical care and will eventually need to enter an assisted living facility as his symptoms worsen over time. His doctors tell him that his illness will likely require him to stop working within the year. They advise him to explore his financial options and consider a plan to provide for his care, including Medicaid planning.

The man calculates that, based on his savings, current and expected future income, and the expected cost of his medical care, he will have spent down his assets and will be eligible for Medicaid within two years. The problem: the man is also the income beneficiary of a trust created by a wealthy uncle. The trust authorizes the trustees, in their sole discretion, to invade the principal of the trust for the man’s health, support, comfort, and welfare. Upon the man’s death, the trustees are to distribute the remaining principal of the trust to several of the grantor’s other nephews and nieces.

Will the man’s status as a potential beneficiary of the trust corpus deem the trust an “available resource” and thus destroy his eligibility for Medicaid? In the same vein, will the trustees be required to apply the trust assets toward his increasingly costly support and care until his death, to the detriment of the residuary beneficiaries? The answers will depend on the governing state law’s interpretation as to the extent of the grantor’s intent to provide for the man, based on, among other factors, the trust’s language, the grantor’s knowledge (or lack thereof) of the man’s health conditions when the trust was created, the size of the trust, and whether the trust has multiple beneficiaries.

Overview of Medicaid Principles

Medicaid, a government program that pays for long-term care for the elderly, is controlled, funded, and administered jointly by the federal government and the states. It is designed to ensure that medical treatment is available to individuals whose income and resources are otherwise inadequate to provide for such care.1 Two categories of individuals generally are eligible to receive Medicaid: the “categorically needy” (those recipients who lack sufficient assets to provide for the basic necessities of life), and the “medically needy” (those persons who have excess income or resources that disqualify them from the categorically needy designation, and who must “spend down” their income and other resources in order to defray their medical expenses and qualify for Medicaid).2 Thus, a Medicaid applicant must exhaust all other available sources of funds, including seeking payments from any trust of which he or she is a beneficiary, to pay for his or her medical costs before qualifying for assistance.3

Accordingly, “[I]ncome from a revocable or irrevocable trust that is available to its beneficiary will be considered in determining the beneficiary’s eligibility for Medicaid. … Further, the powers and discretion possessed by the trustee to pay income or assets in a trust to the beneficiary often is an important factor in determining whether the income or assets will be treated as available to the trust beneficiary for Medicaid purposes.”4 Thus,
“any amounts that the trustees had a legal obligation to distribute to the applicant will be considered available assets and counted in determining the applicant's eligibility for Medicaid.” For Medicaid-eligibility purposes, “the question of whether principal and income of the trust can be considered available to the applicant will be answered according to the terms of the trust,” and “[s]tate law, and specifically state law interpreting trust language, determines whether trust resources and income are available to a beneficiary.”

“Available Assets”: Support Trusts vs. Discretionary Trusts and Settlor’s Intent
In determining whether a trust is an asset available to the trust's beneficiary for purposes of the beneficiary’s eligibility to receive Medicaid and similar benefits, a trust is generally classified as either a “support trust” or a “discretionary trust.”

A support trust directs the trustee to distribute trust income or principal as necessary for the support and maintenance of the beneficiary. A discretionary trust gives the trustee complete discretion to distribute all, some, or none of the trust income or principal to the beneficiary, as the trustee sees fit. Courts usually conclude a support trust is an available asset, while a discretionary trust is not an available asset.

Where a trust instrument states that the trust’s purpose is to supplement, rather than to supplant, any government financial assistance that is or may be available to the trust’s beneficiary, courts generally will find that the trust is not an available asset and need not be exhausted before the beneficiary will qualify for Medicaid.

“[T]he most important factor in determining whether state claims will be allowed against the beneficiary of a protective trust, at least in the absence of an unambiguous controlling statute, is the settlor’s intent.” In determining a trust settlor’s intent, courts consider, among other factors, the circumstances known to the settlor when he or she created the trust (e.g., whether the settlor was aware of the beneficiary’s health and financial needs, or whether the beneficiary’s medical expenses increased drastically after the creation of the trust) and the amount of money in the trust, which may be indicative of the settlor’s intent, or lack thereof, to provide for a remainderman or other beneficiaries.

The Effect of Multiple Trust Beneficiaries on an Income Beneficiary’s Medicaid Eligibility
Another factor that courts consider in discerning a trust settlor’s intent to provide for a trust beneficiary’s medical needs is whether the trust has additional income beneficiaries and/or residuary beneficiaries whose interests may be destroyed if the trustees are required to deplete the trust assets toward the medically needy beneficiary’s long-term care. This may be an indication that the grantor did not intend for the trust to support the medically needy beneficiary to the exclusion of all others and that, therefore, the beneficiary should not be barred from receiving state and federal support in the form of Medicaid and/or similar benefits, despite his status as a trust beneficiary. Thus, where a Missouri decedent died leaving the bulk of his estate in a discretionary trust for the benefit of his son, Bruce, who had been severely mentally handicapped since birth and had substantial medical care expenses, and for the secondary benefit of decedent’s other son,
Kim, with the remainder to be distributed to Kim free of trust upon Bruce’s death, the Missouri Court of Appeals found that Bruce was entitled to state medical assistance to pay the costs of his care, regardless of the existence of the testamentary trust for his benefit.

The court, observing that the trust was “wholly discretionary” in that it authorized, but did not require, the trustee to pay any amount the trustee deemed necessary to provide for Bruce’s “reasonable comfort” during his life, and noting that the trust also authorized the trustee to pay Kim such amounts as warranted by his needs or by a “medical or family emergency,” subject to the trustee’s determination that Bruce’s welfare would not be jeopardized, reasoned:

From the instrument involved here, it is abundantly clear that Bruce’s father intended that payments from the trust to or for Bruce were to supplement, rather than supplant, the benefits to which Bruce would otherwise be entitled. ... [T]he repeated references in the trust to Bruce’s “lifetime” and “for so long as [Bruce] may live,” as well as the provision that, upon Bruce’s death, the remaining assets would be paid to Kim or his descendants argue forcefully for the conclusion that settlor’s intent was that the trust would continue throughout Bruce’s life and that it would be supplementary to support received from the State. A contrary conclusion would totally frustrate the settlor’s intent that his other son Kim would, at least ultimately, derive benefits from the settlor’s estate.

The fact that a trust has more than one income beneficiary is particularly indicative of the settlor’s expectation that the trust would not be depleted for the benefit of one such beneficiary. Thus, a New York court held that a trustee’s refusal to invade the principal of a testamentary trust for the benefit of one of two income beneficiaries of the trust was proper, where the trust instrument authorized the trustee to make such principal invasions “when necessary and proper for [the] benefit” of either life beneficiary. The trustee refused to invade the principal on the grounds that the high cost of the nursing home in which the income beneficiary seeking the invasion resided would quickly deplete the trust assets, leaving no money for the other income beneficiary, who was apparently unable to support himself. The court approved this decision, finding that it was “not clear whether the testatrix, if aware of the present facts, would desire to pay the immense cost of [the income beneficiary's] care, in preference to having society share the burden,” and thus held that the trust assets could not be considered an available resource to the beneficiary in connection with her application for state medical assistance.

Clearly, where a trust instrument requires the remaindermen to approve or disapprove of any distributions of principal to the income beneficiary of the trust, the principal of such trust is not an “available asset” of the income beneficiary and will not prevent the income beneficiary from qualifying for Medicaid and/or similar benefits. Thus, in a 1991 decision, a Florida court held that the principal of an irrevocable trust, established by a Medicaid applicant’s husband, could not be counted as an available asset in determining the applicant’s eligibility. The trustee was authorized to distribute trust principal to the applicant, the grantor’s wife and the sole income beneficiary of the trust, “in the case of extraordinary circumstances.” However, the trust also required that such
principal invasions be made “only with the written prior approval of” the grantor’s and applicant’s two daughters, who were the trust’s residuary beneficiaries. The court, commenting that there was no indication in the record as to whether the two remaindermen would consent to any distributions of principal to their mother, found that the applicant’s interest in the trust would not prevent the applicant from qualifying for Medicaid.

However, the presence of residuary trust beneficiaries is not always enough to persuade a court that a trust is not an available asset to the income beneficiary, for purposes of Medicaid eligibility. For example, the court in Metz v. Ohio Dept. of Human Serv. addressed the Medicaid eligibility of an applicant who was born with cerebral palsy, and whose father had established a revocable trust for the benefit of the applicant, her siblings, and the grantor’s wife. Upon the death of the grantor’s wife, three of the applicant’s siblings received their shares of the trust immediately, but the applicant’s share remained in trust for her benefit, with her heirs (her siblings) as contingent beneficiaries. The trust authorized the trustee to distribute so much of the trust income and/or principal to the applicant as the trustee, “in its sole discretion, shall determine to be necessary, with due regard to the individual need for health, education, care, maintenance and support” of the applicant. The court concluded that “the trustee had no obligation to preserve the trust assets for the benefit of residual beneficiaries,” and held that the trust was an available asset to the Medicaid applicant.

In some states, courts have become increasingly permissive of benefits applicants’ trust interest in recent years, even where the trusts have multiple beneficiaries. For instance, in 1987, a Pennsylvania court reversed, on appeal, a determination by the state’s Department of Public Welfare (DPW) that the income and assets of a trust created by a father for the benefit of all his children were an “available resource” of one of those children, William, who was mentally disabled, which must be applied against his own statutory liability for care before public funds could be provided. In reversing that determination, the court noted:

Testator… chose to set up one trust to benefit all four of his children, rather than four trusts, one to support William and the others to benefit his remaining children. He funded this trust intended to benefit all four of his children with assets valued at sixty-seven percent of his net estate. He granted trustee discretion to determine what portion of trust income was necessary for William’s welfare and to distribute income that was not necessary for that purpose to the other beneficiaries, in equal shares, or to add it to principal. He gave trustee complete discretion to determine whether to invade principal and how much to use for William’s benefit, and directed that, at William’s death, the balance of the trust estate be distributed to his surviving children or their issue.

The court concluded:

It is clear from the language in the trust that testator intended to give trustee the power, as opposed to a duty, to provide support for
William, to the exclusion of the other beneficiaries, should that be necessary. From this grant of discretion to the trustee, however, William’s power to compel distributions from the trust or the trustee’s inability to consider state aid available to William in determining whether to make distributions for William’s benefit does not necessarily follow.\(^{22}\)

However, four years later, the Supreme Court of Pennsylvania held that the principal of a testamentary trust, established by a son for the benefit of his mother, was an “available resource” for purposes of determining the mother’s eligibility for medical assistance benefits from the DPW. The trustees were directed to pay over to the settlor’s mother “so much of the principal of this trust as my Trustees shall deem needful or desirable for her support and maintenance, including medical surgical, hospital, or other institutional care,”\(^{23}\) and, upon the death of the settlor’s mother, were directed to distribute the remaining assets of the trust to the settlor’s spouse and children. The court, noting that the settlor’s will made individual provisions for the settlor’s spouse and children and devised the bulk of his assets to them, found the claim that the settlor intended the trustees to preserve assets for the remaindermen of the trust “unsupportable by the record,”\(^{24}\) and stated, “Indeed, all available evidence points to the conclusion that this money was to be spent for [settlor’s mother’s] care without concern for the remaindermen, and only if the money was not exhausted should the remaindermen benefit.”\(^{25}\)

Likewise, the Supreme Court of Pennsylvania, in \textit{Rosenberg v. Department of Public Welfare},\(^ {26}\) held that the assets of a discretionary support trust, naming the settlor’s surviving spouse as income beneficiary, were available to the beneficiary, rendering her ineligible for medical assistance benefits from the DPW. The trust instrument authorized the trustee, in its sole discretion, to invade the trust principal “for the comfort, welfare, and maintenance and support, for educational requirements, medical and surgical expenses, and other unusual needs of” the income beneficiary, and directed the trustee to distribute the remaining principal to the settlor’s then living issue following the income beneficiary’s death. The \textit{Rosenberg} court distinguished the facts from those in \textit{Lang}, \textit{supra}, and, noting that there was only one life beneficiary, found that the case was “virtually indistinguishable from \textit{Commonwealth Bank} [\textit{supra}].”\(^ {27}\) The court also rejected an argument by the income beneficiary’s executor that the testator’s long-term pattern of gift-giving to his two sons and two grandchildren during his life established the testator’s “inclination to avoid dissipation of his assets,” and his desire to preserve the trust assets for his issue, as “purely speculative.” Thus, the ability of Pennsylvania trust beneficiaries to qualify for state assistance, without first spending down their trust interests, appears to be on the decline.

Connecticut, like Pennsylvania, lately has grown more wary of trust beneficiaries’ applications for state aid, even where the trusts have multiple beneficiaries. In a 1979 decision, \textit{Zeoli v. Commissioner of Social Services}, the Supreme Court of Connecticut determined that two sisters and beneficiaries of a trust, both of whom were mentally handicapped, were entitled to receive medical assistance from the state, on the basis that the trust was not an “available asset” to them. The trust, created by the beneficiaries’ father, directed the trustee “[t]o pay or apply so much of the net income or the principal of such trust to or among either one or both of my daughters as shall be living ... in such proportions and amounts as my Trustee shall determine in his absolute and uncontrolled
discretion ... without regard to equality of distribution and regardless of whether any one of my daughters may be totally deprived of any benefit hereunder.”28 The court found that the trust settlor had intended to provide only supplemental support to the beneficiaries, since the trust’s provisions allowed the trustee to discriminate against either of the two beneficiaries, as well as to consider other sources of funds available to the beneficiaries, in deciding whether to make distributions to the beneficiaries. Thus, the court held, as neither beneficiary could compel the trustee to make a distribution for her benefit, the trust funds could not be considered an “available asset” of either beneficiary.

However, in 2004, the Supreme Court of Connecticut, distinguishing its decision in Zeoli, supra, held that the assets of a testamentary trust for the support of a mentally disabled beneficiary were available to the beneficiary for purposes of determining the beneficiary’s eligibility for Medicaid benefits, even though the trust had multiple residuary beneficiaries. The fact that, unlike in Zeoli, there was only one income beneficiary of the trust appears to have led, in part, to the court’s conclusion that the income beneficiary was entitled to compel the trustee to make distributions for her benefit. The court stated:

Although the factual posture of the present case is similar to Zeoli, notably, the testamentary language reflective of the testators’ intent is not. In the present case, the trust instrument manifests the testator's unambiguous intent to create a general support trust whereas the Zeoli trust unequivocally indicated the testator’s intent to provide for the beneficiaries’ supplemental needs. In Zeoli, the trust instrument was replete with references to the “absolute and uncontrolled discretion” afforded the trustees in their decision-making process. In addition to the overt references to the unfettered discretion of the trustees, the court in Zeoli deemed the provision authorizing the trustee to discriminate among the beneficiaries when making distributions highly probative of the vast level of discretion the testator intended to confer on the trustee. In the present case, however, the testator granted the trustees “sole discretion” to make distributions and provided them with factors to consider when making “discretionary distributions ….” This language is not as strong as that used in Zeoli and suggests that the testator in the present case intended to confer a lesser amount of discretion.29

Conclusion

With these factors in mind, what can a trust grantor and an attorney draftsman do to ensure that a trust will meet the income beneficiary's needs, while also safeguarding the beneficiary’s eligibility for Medicaid and other government support, should such support become necessary? In addition to giving the trustee broad discretion and avoiding trust language that suggests an ascertainable standard of care, the grantor and his or her attorney should consider including a number of residuary beneficiaries, and, if feasible, additional income beneficiaries as well, and should carefully draft the trust to emphasize the grantor's desire to provide for these additional beneficiaries. By taking these steps, the grantor and attorney may decrease the likelihood that the trust will render the income beneficiary ineligible for Medicaid.
A more difficult and open-ended question is how a trustee ought to navigate the line between, on the one hand, providing adequate support for the trust’s income beneficiary or beneficiaries within the terms of the trust, and, on the other hand, preserving adequate principal for the residuary beneficiaries, where an income beneficiary is or may become a candidate for Medicaid. One can easily envision a situation in which, either a court or a government agency having determined that a trust beneficiary is ineligible for Medicaid because the trust is an “available resource” to the beneficiary (despite careful planning by the grantor and his or her attorney to avoid such an outcome), the beneficiary then demands that the trustee expend disproportionate amounts of the trust corpus on his or her care, leaving the remaindermen unhappy if the trustee complies with such demands but leaving the trustee open to complaint by the income beneficiary if the trustee refuses to comply.

Equally conceivable is a situation in which a beneficiary is deemed to be Medicaid-eligible but the trustee, in its discretion, either chooses to supplement such support with large portions of the trust corpus over the remaindermen’s objections, or refuses to apply any trust principal to enhance the income beneficiary’s care. Further, if, as in Pollak v. Dept. of Health and Rehabilitative Services, supra, the trust requires the remaindermen to approve or disapprove of any principal invasions to the income beneficiary, the remaindermen might refuse to sign off on distributions necessary to maintain the income beneficiary comfortably, in contravention of the settlor’s intent. These problems become potentially more pronounced as funding for Medicaid and similar programs dwindles in many states.

While skillful drafting can mitigate these potential pitfalls, it does not always prevent them. Trust grantors and their attorneys should recognize that, by giving trustees unfettered discretion and adding multiple beneficiaries to their trusts in order to increase the odds that beneficiaries will qualify for Medicaid, they run the risk that their trustees, and/or the courts, will misinterpret their intent, and that their medically needy beneficiaries may not receive the level of care that the grantors intended.

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Endnotes

2 Id.
3 Id.
6 Id.
7 Id.
9 Id., 498 N.W.2d at 265.
11 Id. See, e.g., State v. Rubion, 158 Tex. 43, 308 S.W.2d 4 (Tex. 1958).
13 Id., 688 S.W.2d at 12.
15 Id.
17 Id.
18 145 Ohio App.3d 304, 762 N.E.2d 1032 (Ohio App. 6th Dist. 2001).
19 Id., 145 Ohio App.3d at 308, 762 N.E.2d at 1036.
20 Id., 145 Ohio App.3d at 309, 762 N.E.2d at 1039.
22 Id., 515 Pa. at 439, 528 A.2d at 1341.
24 Id., 528 Pa. at 489, 598 A.2d at 1282.
25 Id.
27 Id., 545 Pa. at 33, 679 A.2d at 770.