Federal District Court Decision in Massachusetts Rules Distributions from a Special Needs Trust May Cause Ineligibility for Section 8 Housing Subsidy

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In *DeCambre vs. Brookline Housing Authority* (D.Mass.No 14-13425-WGY, March 25, 2015); a federal district court ruled that a local housing authority properly counted payments and distributions from a first party special needs trust as income. Because the income from distributions from the trust, when added to Kimberly DeCambre's SSI income, pushed her over the maximum income limits allowed for a Section 8 housing subsidy, Ms. DeCambre lost her eligibility for Section 8.

Kimberly DeCambre is the beneficiary of a court established first party special needs trust that was funded with the proceeds from a $330,000 personal injury settlement. Ms. DeCambre receives SSI and Medicaid due to her disability. She also received a Section 8 Housing Voucher. In the fall of 2013, the Brookline Housing Authority (BHA) informed Ms. DeCambre that she was no longer eligible for Section 8 because the trust had disbursed more than $60,000 during the year for her car expenses, phone, internet, medical and dental bills for herself, veterinary care for her pets and travel expenses. A hearing officer upheld this decision and an appeal was filed with the U.S. District Court for the District of Massachusetts. The Federal District court ruled that the BHA properly terminated Ms. DeCambre's Section 8 benefits due to excess income.

This case highlights the critical need for trustees of special needs trusts to stay informed about what benefits the beneficiary of a special needs trust is receiving, as well as keep track of what her other sources of income are on an annual basis. It is also critical to know the maximum income eligibility criteria is for each of the specific benefits the beneficiary of a SNT receives. Had the trustee in this case known this information, he may have avoided the total loss of the Section 8 voucher by limiting the amount of distributions from the trust so that the beneficiary remained under the income guidelines as required by Section 8. While the distributions from the trust were exempt if the only benefits Ms. DeCambre was receiving were Medicaid and SSI, the distributions were deemed as income under Section 8 rules. Section 8 regulations do not exempt distributions from a special needs trust for certain types of distributions.

Under Section 8 rules (24 C.F.R.Sec. 5.609), payments for temporary, non recurring or sporadic income is not deemed as income. Had the trustee paid attention to these rules, the beneficiary may have had to pay increased rent for the amount of distributions for any and all recurring payments but she would not have completely lost her Section 8 voucher. Section 8 requires the resident to pay 30% of his/her income toward rent. The trustee could have paid items such as sporadic and occasional payments of her credit card bill or purchase new clothing or household goods with no impact on either an increase in her rent or loss of Section 8 benefits as these type of payments are considered sporadic and non routine. The payment of an occasional cable tv or internet bill, vet bill for her cats may also have been allowed. However in this case there were over $6,000 in vet bills for cancer treatment for two cats which were seen as routine payments. In this case both the amount of distributions as well as the extraordinary type resulted in a loss of her voucher. The 2014 income cap for a family of two (Ms. DeCambre's adult son lived with her) was $22,600. Because the trust distributed more than $60,000 in countable income she lost eligibility for her Housing voucher. While the recipient can reapply once her income is within guidelines, there is a lengthy waiting list for new Section 8 vouchers so it may be years before she receives another Housing Voucher. This loss of Section 8 will have a long term financial impact on the beneficiary of the SNT. Having lost her subsidy, her rent will increase from $312 per month to the full fair market value of the rent of $1,595 per month. In addition,if the trust pays her rent going forward, the payment will be deemed as unearned income to her for food and shelter and will result in an additional 1/3rd loss of SSI.

When a beneficiary is receiving Section 8 assistance, the trustee must develop a budget that takes eligibility for all governmental benefits she is receiving into consideration. The choice of what goods or services are paid by the trust may increase the amount of rent due. An increase in rent may be acceptable in that the beneficiary of the trust is able to live a higher quality of life by paying a bit more in rent. However increasing distributions from the trust to the point of exceeding income guidelines is seldom wise if there are not sufficient assets in the trust to make up for the potential loss of Section 8 Housing Subsidy. If the assets within the trust are modest (as they were in DeCambre's trust), and not expected to last the beneficiary's lifetime, the loss of a Section 8 Housing Subsidy should be avoided. Limiting distributions from the trust in order to preserve eligibility for the Section 8 voucher should be considered. DeCambre's trust was initially funded with a law suit settlement of approximately $330,000. While this appears to be a substantial amount, it would need to be distributed in a prudent manner in order to last Ms. DeCambre's lifetime. It is important to note that several of the distributions such as those for occasional travel and for medical and dental bills, were not deemed as income as they are exempt from deeming per 24 C.F.R. Sec. 5.609. However expenses for vet bills which totaled over $6,000, routine car expenses, cellular telephone service and cable tv were all deemed as countable income. Failure to consider HUD regulations and excessive spending at a rate the trust could not sustain over a long period of time were factors in this decision. Here the spending from the trust was at such an extravagant rate that it was hard to gain any sympathy from the court. In the first 3 years of the trust, the trustee spent $200,000 on administration fees, goods and services. Given the size of the trust, the trustee's distributions were neither prudent nor within guidelines of eligibility rules for the specific type of benefits Ms. DeCambre was receiving. An expression comes to mind when reading the findings in this case is "Pigs get fed and Hogs get slaughtered". The distributions here were extravagant and way out of proportion of what was reasonable resulting in a decision that will haunt Section 8 voucher holder for years to come.

The court noted that Section 8 may need to revise its deeming of distributions from a Qualified SNT in light of the fact that the trusts were created by Congress to protect SSI and Medicaid. Unless or until Section 8 changes their regulations and exempts distributions from a SNT so they mirror SSI and Medicaid regulations, distributing from a SNT remains a trap for the unwary for Trustees of SNTs whose beneficiaries are dependent on Subsidized Housing. A knowledgeable decision needs to be made to limit distributions from the trust to non recurring, temporary or sporadic payments. Distributions for bona fide medical or dental expenses are not deemed as income under Section 8 guidelines.

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