

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

John Thompson, :
Plaintiff. :

v. : Civil Action No. 2:02-CV-141

Jo Anne B. Barnhart, :
Commissioner, Social :
Security Administration. :
Defendant. :

OPINION AND ORDER
(Papers 10 & 12)

The matter is before the Court on plaintiff's motion for judgment on the pleadings (paper 10) and the Commissioner's motion for an order affirming her decision (paper 12). For the following reasons, the Commissioner's motion is GRANTED and plaintiff's motion is DENIED.

I. Introduction

Plaintiff was receiving Supplemental Security ("SSI") benefits when the Commissioner discovered that he had received a personal injury settlement whose funds were put into a Trust. Following a hearing before

an administrative law judge ("ALJ"), the Commissioner determined that the amount of the injury settlement was a countable resource under the Social Security Act. Accordingly, the Commissioner found that plaintiff was not eligible for SSI benefits and that SSI payments made from November 1998 until the termination of benefits in February 2000 were overpayments subject to reimbursement. In determining that the funds were a countable resource, the ALJ found that the Trust was revocable notwithstanding the specific "irrevocable" language in the Trust.

The issue before the Court is whether substantial evidence supports the decision of the Commissioner that the Trust was revocable and hence a countable resource.

II. Statement of Facts

On September 1, 1997, Plaintiff suffered a double amputation to his legs as a result of a boating accident. He was awarded SSI benefits, effective November 1, 1997. During this time he was pursuing a lawsuit relating to his injuries. On October 22, 1998, a Trust was created in West Virginia where plaintiff

lived to receive the settlement funds from lawsuit. These funds were in excess of \$165,000. Initially, Plaintiff's brother-in-law was the trustee for the "John L. Thompson Trust". During the first eighteen months the Trust disbursed in excess of \$50,000. Many of these disbursements were made directly to plaintiff and were used to buy both necessities and non-necessities for plaintiff.

By the end of January 1999, Plaintiff had moved to Vermont. On January 2000, the Commissioner learned from the Internal Revenue Service that Plaintiff was the owner of a bank account with the Bank of Boston. After receiving information from plaintiff and the trustee about the Trust funds, the Commissioner informed plaintiff on February 18, 2000 that his benefits would be suspended because he was receiving income directly from the Trust and there was some evidence that he was earning income. Plaintiff was also advised that he was overpaid benefits after November 1, 1998 because his payments from the Trust

exceeded the SSI limits. Plaintiff's request for reconsideration and waiver of the overpayment were denied because the Commissioner determined that the Trust was revocable and exceeded the \$2,000 SSI resource limitation. Alternatively, the Commissioner found that even if the Trust was irrevocable, the disbursements made to him from the Trust constituted income and made him ineligible for SSI benefits after November 1998.

Plaintiff appealed the decision and a hearing was held before an ALJ Ruth L. Kleinfeld on January 10, 2001. The ALJ issued a decision finding that under West Virginia law the Trust was revocable, because plaintiff was both the grantor and the only beneficiary. Since the value of the Trust exceeded the \$2,000 limitation of the SSI program, it was a countable resource rendering plaintiff ineligible for SSI benefits. The ALJ also found that the disbursements from the Trust constituted countable income and exceeded the income limitation. The ALJ

denied the request for waiver of the overpayment due to the amount of money remaining in the Trust. The Appeals Council denied plaintiff's appeal of the ALJ's decision.

DISCUSSION

I. Applicable Regulations

An individual like plaintiff with no eligible spouse is eligible for SSI benefits if his countable resources do not exceed the \$2,000 resource limit provided in 20 C.F.R. 416.1205, and other eligibility requirements, including countable monthly income, are met. Under the Commissioner's regulations a countable resource is defined as "cash or other liquid assets or any real or personal property that an individual . . . owns and could convert to cash for his or her support and maintenance" provided the individual has the power to liquidate the property. 20 C.F.R. § 416.1201(a)(1). If the individual lacks the authority to liquidate the property, it is not a countable resource.

The Commissioner has further delineated this issue

by promulgating guidelines in the Program Operation Manual System (POMS). The POMS manual does not have force of law, see Schweiker v. Hansen, 450 U.S. 785, 789 (1989), but may give guidance in statutory and regulatory interpretation. Ruppert v. Secretary of Health & Human Services, 671 F.Supp. 151 159 (E.D.N.Y. 1987), aff'd in part, rev'd in part, 871 F.2d 1172 (2d Cir. 1989) (citing, inter alia, St. Mary's Hospital of Troy v. Blue Cross & Blue Shield Asscc., 788 F.2d 888, 890 (2d Cir. 1986)). Under the POMS a trust instrument is a countable resource "if an individual (claimant, recipient or deenor) has the legal authority to revoke the trust and then use the funds to meet his food, clothing or shelter needs or . . . can direct the use of the trust principal for . . . support or maintenance under the terms of the trust" POMS SI 01120.200D.1.a. Generally, a trust is irrevocable if the grantor does not reserve the right to revoke or modify it. Restatement (Second) of Trusts §§ 330 and 331. However, a grantor who is the sole beneficiary of

the trust may amend or terminate the trust even if he has failed to reserve that power. Id. at § 339. The Commissioner must consider the terms of the trust and state law when deciding the authority of the grantor/SSI beneficiary. POMS SI 01120.1.a and SI 01120.200E.2.

In reviewing the decision of the Commissioner this Court may reverse the Commissioner only if the decision is based on legal error or not supported by substantial evidence. Shaw v. Chater, 221 F.3d 126, 131 (2d Cir. 2000).

2. The Trust is Revocable under West Virginia law

Since the parties agree that the entire case hinges on whether the Trust is a countable resource, we discuss that issue first.

The Trust clearly states that its purpose was to place the settlement funds in a irrevocable trust "to provide benefits for John without interfering with or reducing the benefits John would be entitled to from any state or federal agency." Tr. 67. Furthermore,

the Trust states that "John shall have no interest in either principal or interest of this Trust." Tr. 69.

The term of the Trust is for John's lifetime.

Following John's death, the Trust provides that the Trust assets shall be "first paid to any state governmental agency to an amount equal to the total medical assistance paid on behalf of John under a state plan administered under the subchapter containing 42 USC 1396p." (Medicaid). Tr. 71. Any assets remaining after payment of Medicaid are to be distributed to

those individuals in accordance with the distribution of the residue of John's estate under John's will, as if the assets were transferred to John's estate, or, if John has no Will, to John's heirs-at-law. However, John's estate shall not be the beneficiary of the Trust assets, it being the intent only to refer to John's Will to determine the remaindermen of this Trust.

Tr. 71. Any assets remaining after the payments specified above "shall be assigned to John's estate."

Id.

The issue is whether the Trust is a countable resource under West Virginia law. If plaintiff has the absolute right to control the principal, then the Trust is a countable resource and the plaintiff is not eligible for benefits because the Trust corpus exceeds the \$2,000 resource limitation. Plaintiff contends that under West Virginia law even if he is the grantor and sole beneficiary the Trust is irrevocable if so stated in the trust document. Plaintiff argues that the ALJ misread West Virginia law.

As the ALJ noted, under West Virginia law the settlor of a trust may not revoke the terms of the trust without the consent of all the beneficiaries, unless the power of revocation is specifically reserved in the trust document. Grand Lodge of Ind. Order of Odd Fellows v. Gunroe, 177 S.E.2d 150, 156 (W.Va. 1970). This principle was first recognized in Lamb v. First Huntington National Bank, 7 S.E.2d 441, 443 (W.Va. 1940). In Lamb, the West Virginia Supreme Court in dicta noted that a settlor "not having been the sole

beneficiary, and not having reserved the power of revocation in the trust instrument wherein he participated as settler, [he] could not revoke . . . without the consent of the other beneficiaries." Id. at 443. This is consistent with the general rule that a settlor who is also the sole beneficiary retains the right to revoke the trust regardless of the statement that the trust is irrevocable. Indeed, the West Virginia Supreme Court acknowledged this rule in Gavitt v. Swiger, 248 S.E.2d 849, 851 (1978) where it "recognized that a settlor-sole beneficiary can revoke a trust despite the language of irrevocability in the trust instrument." Since plaintiff is the sole beneficiary of the Trust, the Trust is revocable by him and therefore a countable resource for the purposes of the entitlement to Social Security benefits.

Plaintiff cites to three ALJ opinions which he claims determined that similar trusts were not a countable resource under West Virginia law. Two of these decisions were not before the ALJ, but submitted

for the first time to the Appeals Council. The third was not part of the administrative record. Regardless, each case differs factually from plaintiff's situation; moreover, as noted above, West Virginia law makes the trust revocable.

Belatedly, plaintiff argues that the doctrine of worthier title has been abolished in West Virginia and hence a trust creating an remainder in the grantor's heirs is irrevocable. As plaintiff notes, the doctrine of worthier title is a vestige of feudal law intended to protect the interests of the lord of the manor when his tenants died. Plaintiff also notes that the present-day application of the doctrine is primarily one of a rule of construction, and "still makes language, like the language in John Thompson's trust, which purports to create a remainder interest in the grantor's heirs . . . ineffective and results instead in an 'indefeasible reversion' back to the grantor." Paper 15 at 2. Faced with this situation, plaintiff argues without support that the doctrine of worthier

title has been entirely abolished in West Virginia, both as a rule of law and a rule of construction. Although this argument was not presented to the Commissioner in the administrative proceedings, this Court finds it to be without merit.

The West Virginia statute that abolishes the doctrine of worthier title provides, in relevant part: "[I]t being the intent and purpose of this section to completely abolish the rule of law known as the doctrine of worthier title and the rule of law that a grantor cannot create a limitation in favor of his heirs or next of kin." W. Va. Code § 36-1-14a. While this language clearly extinguishes the rule of law that a gift to one's heirs or next of kin can never create a remainder, it does not automatically create a remainder interest in the Trust when such a gift is purportedly made. Accordingly, the court must look at the language of the Trust under West Virginia law to determine whether the Trust creates a remainder. See United States v. Ritter, 416 F.Supp. 777, 782-83 (S.D. W.Va.

1976), rev'd on other grounds, 558 F.2d 1165 (4th Cir. 1977). In Ritter, the court predicted that West Virginia would retain the doctrine of worthier title as a rule of construction creating a presumption that when making a disposition to his heirs, a grantor intends to create a reversionary interest in himself. As noted above, the Trust creates a remainder in the grantor under West Virginia law. This is particularly true where Plaintiff received more than \$50,000 from the Trust following his receipt of SSI benefits. The doctrine of worthier title does not constitute substantial evidence to overturn the decision of the ALJ.

3. Overpayment

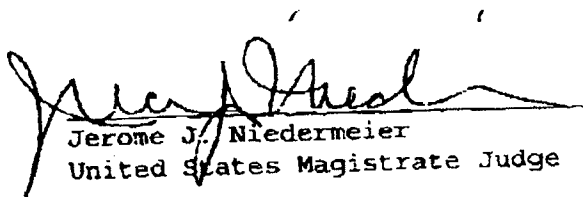
There is no dispute that Plaintiff received directly from trustee substantial monies to pay for goods and services and that these amounts must be counted as unearned income. The ALJ found that Plaintiff was overpaid in the amount of \$8,742.33, and while Plaintiff was not at fault in causing the

overpayment, it would not be against equity and good conscience or defeat the purposes of the statute to recover the overpayment. Plaintiff does not present any argument on the issue of waiver, except his contention that the trust was irrevocable. The decision of the ALJ that the overpayment may not be waived is supported by substantial evidence.

CONCLUSION

Accordingly, the Trust assets are a countable resource under the regulations of the Social Security administration. The decision of the Commissioner is affirmed. Plaintiff's motion for summary judgment is denied.

Dated at Burlington, in the District of Vermont,
this 17th day of July, 2003.


Jerome J. Niedermeier
United States Magistrate Judge