

1 STEPHEN W. DALE, SBN 161884
MARGARET MARY FINN, SBN 80034
2 JENNIFER L. STENEBERG, SBN 202985
THE DALE LAW FIRM, PC
3 1670 Riviera Ave., Ste. 101
Walnut Creek, CA 94596
4 Tel.: (925) 280-0172
Fax: (925) 280-0177

5 Attorneys for Petitioner
6 NORTH BAY HOUSING COALITION,
as Trustee of the GOLDEN STATE POOLED
7 TRUST

8
9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR NAPA COUNTY

11
12 In re:) Case No.:
13 THE GOLDEN STATE POOLED TRUST)
14 INDIVIDUAL TRUST ACCOUNT FOR) MEMORANDUM OF POINTS AND
[REDACTED]) AUTHORITIES IN SUPPORT OF PETITION
15) FOR INSTRUCTIONS
16)
17) DATE:
18) TIME:
19) DEPT.:
20)
21)
22)

23 Petitioner, North Bay Housing Coalition, Trustee of The Golden State Pooled
24 Trust (hereinafter referred to as “the Trust”), submits this Memorandum of Points and
25 Authorities in support of its Petition for Instructions.

26 **INTRODUCTION**

27 Both state and federal law provide for the protection of estate assets from
28 reimbursement to the Department of Health Care Services where the decedent is under

1 the age of 55 when services are provided or where the decedent is survived by a minor
2 child. Pursuant to the decision in *Shewry v. Arnold*, 125 Cal.App.4th 186 (2004), the
3 assets of a special needs trust are, upon the death of the beneficiary, to be treated as part
4 of the estate of the beneficiary. Therefore, these assets enjoy the protections afforded
5 by state and federal law.

6 Nevertheless, and despite the relatively clear statement of the law in *Shewry*, the
7 Department of Health Care Services (“DHCS”) has and continues to assert a demand
8 for reimbursement from the assets remaining in [REDACTED]’s pooled trust
9 account. Because the circumstances are such that the petitioner believes that the
10 remaining assets should be exempt from reimbursement, it is seeking instruction from
11 the Court with regard to the propriety of distribution to either the DHCS or the
12 remainder beneficiary.

13 **ARGUMENT**

14 **I. REIMBURSEMENT TO THE DEPARTMENT OF HEALTH CARE**
15 **SERVICES IS NOT REQUIRED UNDER THE RELEVANT STATUTES**

16 Medi-Cal is the program through which the State of California administers the
17 federal Medicaid program. Federal law requires that participating state plans like
18 Medi-Cal seek repayment or reimbursement for medical care provided to recipients of
19 state medical assistance. 42 U.S.C. § 1396k. However, the law also exempts
20 reimbursement from the estate of an individual when certain conditions are present. 42
21 U.S.C. § 1396p(b)(2); Welf. & I Code § 14009.5. Of particular relevance to this case,
22 the law prohibits recovery where the decedent was under the age of 55 at the time
23 health care services were provided, or where the decedent is survived by a minor child.

24 *Id.*

25
26
27
28 ///

1 As held in the case of *Shewry v. Arnold*, 125 Cal.App.4th 186 (2004), these
2 statutory exemptions are applicable and controlling in a special needs trust context like
3 that presented here. As discussed in *Shewry*, pursuant to Probate Code section 3605(b)
4 the assets of a special needs trust are treated as part of a deceased beneficiaries' estate
5 for purposes of Medi-Cal reimbursement. *Shewry*, 125 Cal.App.4th at 197. Medi-Cal
6 may not seek reimbursement if any of the exempting conditions under either state or
7 federal law are present. *Id.* In this case, two of the exempting conditions exists -- (1)
8 the deceased beneficiary, [REDACTED], was under the age of 55 at the time of
9 her death, and (2) she is survived by a minor child. As such, DHCS's attempt to
10 recover the assets remaining in the Trust should be rejected by the Court.

14 **II. THE TERMS OF THE TRUST ARE CONSISTENT WITH THE**
15 **POSITION THAT DHCS IS NOT ENTITLED TO REIMBURSEMENT**

16 The terms of the Trust are completely consistent with the position that DHCS is
17 not entitled to reimbursement. Article One, Section 1.03 of the Golden State Pooled
18 Trust states:

19 It is the intention of the North Bay Housing Coalition as Settlor to
20 comply with all state and federal laws and regulations related to pooled
21 trusts for persons with disabilities, including 42 USC 1396p d(4)(C); and
22 Title 22 of the California Code of Regulations, Section 50489.9(a)(4). In
conformity with those laws and regulations;

23 . . .

24 The State of California shall receive, upon the death of the disabled
25 individual or disabled spouse, all funds remaining in the Individual
26 Account, up to an amount equal to the total amount of medical assistance
27 paid on behalf of that individual by the Medi-Cal program. The State shall
28 receive this amount only to the extent that funds remain in that individual's
account and are not retained by the trust to cover management and
investment fees associated with that account.

1 As quoted above, the Trust expressly provides for reimbursement for medical
2 assistance benefits upon the death of the beneficiary. However, the Trust also makes
3 clear that it is the intent of the settlor that administration of the Trust, including
4 repayment of any Medi-Cal liens shall be made in compliance “with all state and
5 federal laws and regulations related to pooled trusts for persons with disabilities.”
6 Therefore, application of the exemption provisions of 42 U.S.C. § 1396p(b)(2) and
7 Welfare & Institutions Code § 14009.5 to the assets of [REDACTED]’s individual trust
8 account is completely consistent with the terms of the Trust.

9 **III. THE LANGUAGE OF 42 U.S.C. § 1396p(d)(4)(C) DOES NOT**
10 **SUPERCEDE OR NULLIFY THE EXEMPTION PROVISIONS OF 42**
11 **U.S.C. § 1396p(b)(2)**

12 The decision in *Shewry v. Arnold*, 125 Cal.App.4th 186 (2004), held that the
13 provisions of 42 U.S.C. §§ 1396p(b)(2) and (d)(4) are not mutually exclusive, and that
14 the exemptions provided through section 1396p(b)(2) are available to the beneficiaries
15 of a trust created under section 1296p(d)(4). As noted by the *Shewry* court:

16 The provisions of *subdivision (d)* relate to eligibility for medical
17 assistance. In determining an individual’s eligibility for state medical
18 assistance, the assets of a special needs trust are to be disregarded if the
19 state is entitled to be reimbursed from the trust. The nature of that right to
20 reimbursement is not set forth in *subdivision (d)*. Reimbursement
21 provisions are found in *subdivision (b)*, which expressly excludes assets
22 distributed to an adult disabled child [or a child under the age of 21]. These
23 reimbursement provisions are generally applicable to all reimbursements
24 for medical assistance payments. The Department has put forth no
25 persuasive argument that reimbursement from special needs trusts should
26 be treated differently from other reimbursements. We conclude such trusts
27 should not be treated differently. Thus, qualification of a state plan for
28 medical assistance under the federal Medicaid provisions does not require
reimbursement from special needs trust assets distributed to an adult
disabled child [or a surviving spouse]. *Id.* at 197.

As already decided in *Shewry*, there is no conflict between subdivisions (b) and
(d) of 42 U.S.C. § 1396p. It, therefore, follows that there is no rule of statutory

1 construction which would dictate that this Court disregard the provisions of subdivision
2 (b) and compel reimbursement to DHCS in this case.

3 **IV. ANY FACTUAL DISTINCTION BETWEEN THIS CASE AND *SHEWRY***
4 **IS INCONSEQUENTIAL**

5 Finally, petitioner anticipates that the DHCS will try to distinguish the case at
6 bar from the facts presented in *Shewry*. However, the factual distinctions between the
7 two cases are not dispositive to the legal holding. *Shewry* involved a Medi-Cal
8 reimbursement from a special needs trust where the trust assets were to be disbursed to
9 the beneficiary's adult disabled child. In the case currently before the Court, the trust
10 assets are to be disbursed to the beneficiary's surviving minor child. Inasmuch as the
11 exemptions of trust assets from reimbursement based on survival of an adult disabled
12 child and survival of a minor child derive from the exact same statutory provision, the
13 distinction between the two exemptions is inconsequential. The statutory scheme in
14 both instances is the same and must be consistently applied.

15 Likewise, it is inconsequential that the trust in *Shewry* was a self-settled special
16 needs trust established under 42 U.S.C. § 1396p(d)(4)(A) and that the trust at issue in
17 this case is a pooled special needs trust established under 42 U.S.C. § 1396p(d)(4)(C).
18 As reflected in the quotation above, the court in *Shewry* was concerned with the
19 interrelationship between subdivisions (b) and (d) of 42 U.S.C. § 1396p generally, and
20 there is nothing in the opinion which would limit its application to only to a (d)(4)(A)
21 trust. The purpose and intent of trusts created under subdivisions (d)(4)(A) and
22 (d)(4)(C) are virtually identical, and the rationale of the *Shewry* decision is equally
23 applicable to both.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **CONCLUSION**

2 For the forgoing reasons, the Court should issue instructions to the petitioner to
3 deny the claim for reimbursement to the DHCS, and authorize distribution of any
4 remaining assets in the beneficiary's trust account to the remainder beneficiary.

5
6
7 DATED: _____, 2008

8 THE DALE LAW FIRM
9 By: JENNIFER L. STENEBERG
Attorneys for Petitioner