

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) PETITION FOR INSTRUCTIONS ON
[REDACTED]) DEMAND FOR REIMBURSEMENT TO
15) DEPARTMENT OF HEALTH CARE
16) SERVICES
17) (42 U.S.C. §1396p (d)(4)(C); CA Probate
18) Code §§17200)
19)
20) DATE:
21) TIME:
22) DEPT.:
23)
24)
25)
26)
27)
28)

INTRODUCTION

24 Petitioner, NORTH BAY HOUSING COALITION, as Trustee of the GOLDEN STATE
25 POOLED TRUST (“Trust”) seeks instruction from this Court as to whether or not
26 reimbursement must be made to the Department of Health Care Services (“DHCS”) for medical
27 services provided to [REDACTED], the beneficiary of an individual trust account

1 held by the GOLDEN STATE POOLED TRUST. The decision in the matter of *Shewry v.*
2 *Arnold*, 125 Cal.App.4th 186 (2004), held that the remaining assets of a Special Needs Trust are
3 treated as part of the beneficiary's estate upon death, and that the provisions of federal and state
4 law exempting an estate from repayment of Medicaid/Medi-Cal services under certain
5 circumstances are to be applied to such assets.
6

7 It is the position of the petitioner and the remainder beneficiary that the holding of
8 *Shewry v. Arnold* controls in this case, and that the repayment being demanded by the DHCS
9 should be denied by the Trustee. Conversely, the DHCS has taken the position that *Shewry v.*
10 *Arnold* does not control and that repayment must be satisfied before any distribution may be
11 made to the remainder beneficiary. It is because of this dispute, that petitioner now seeks
12 instruction from the Court.
13

14 **PETITION**

15 Trustee NORTH BAY HOUSING COALITION alleges and petitions:
16

- 17 1. Petitioner is the Trustee of the GOLDEN STATE POOLED TRUST, a qualified
18 Pooled Self-Settled Special Need Trust established pursuant to 42 U.S.C.
19 1396p(d)(4)(C). A true and correct copy of the Trust is attached as Exhibit "A" to
20 this Petition.
21
- 22 2. [REDACTED] was the beneficiary of an
23 individual trust account held by the GOLDEN STATE POOLED TRUST, and
24 administered by petitioner as Trustee. The principal place of administration of the
25 Trust is in the County of Napa.
26
27
28

- 1 3. The source of the funding of the [REDACTED]'s individual trust account was the
2 settlement proceeds of a personal injury action. This action involved an accident
3 wherein [REDACTED] suffered a severe back injury.
4
- 5 4. [REDACTED] joined the GOLDEN STATE POOLED TRUST on [REDACTED]
6 [REDACTED] and a true and correct copy of her joinder agreement is attached hereto as
7 Exhibit "B". [REDACTED]'s individual trust account was funded on or about
8 [REDACTED].
9
- 10 5. A pooled self-settled special needs trust is a form of spendthrift trust which gives all
11 discretionary authority for distributions from a beneficiary's individual trust account
12 absolutely and exclusively to the trustee. By transferring the proceeds of the injury
13 settlement into a pooled special needs trust, the funds were, at the trustee's sole
14 discretion, available to provide for [REDACTED]'s "special needs" not otherwise
15 provided for by public benefits. However, [REDACTED] had no direct access to or
16 discretion over the funds. As a result the assets of her individual account were
17 considered an "exempt resource" for purposes of determining eligibility for essential
18 public benefits like Supplemental Security Income ("SSI") and Medi-Cal. The
19 authority for the pooled special needs trust is found at 42 U.S.C. §1396p(d)(4)(C)
20 and Title 22 of the California Code of Regulations, Section 54089.9(a)(4).
21
22
- 23 6. To qualify as a valid pooled self-settled special needs trust under these statutes, the
24 trust must contain a provision whereby the DHCS is reimbursed for medical services
25 provided to the beneficiary upon the death of the beneficiary and termination of the
26 trust account. Such a provision is included in the GOLDEN STATE POOLED
27 TRUST document at Article 6, Section 602. (See Exhibit "A").
28

- 1 7. Tragically, on [REDACTED], less than a year after settling her personal injury action,
2 [REDACTED] died. Attached hereto as Exhibit "C" is a true and
3 correct copy of [REDACTED]'s death certificate. [REDACTED] was
4 51 years old at the time of her death.
5
- 6 8. [REDACTED] is survived by her son, [REDACTED], who
7 was 16 years old at the time of his mother's death. Attached hereto as Exhibit "D" is
8 a true and correct copy of [REDACTED]'s birth certificate.
9
- 10 9. As required by law, on June 27, 2007, the DHCS was notified of the death of
11 [REDACTED]. A true and correct copy of the notification letter to
12 DHCS is attached hereto as Exhibit "E." In response, on July 25, 2007, the DHCS
13 indicated that there would be no creditor's claim against the estate of [REDACTED]
14 [REDACTED] because [REDACTED] was under the age of 55. Attached hereto as
15 Exhibit "F" is a true and correct copy of the DHCS' letter. However, thereafter, on
16 October 29, 2007, a second letter was received from the DHCS asserting a claim
17 against the funds in the Trust in the amount of \$171,182.04. Attached hereto as
18 Exhibit "G" is a true and correct copy of the Department's second letter.
19
- 20 10. Believing that the DHCS is not entitled to claim reimbursement from the estate of
21 [REDACTED] because of the exemption provided by 42 U.S.C. §
22 1396p(b)(2) and Welfare & Institutions Code § 14009.5 as interpreted in *Shewry v.*
23 *Arnold*, 125 Cal.App.4th 186 (2004), on December 17, 2007, counsel for the
24 petitioner notified the Department that payment would not be forth coming. Counsel
25 explained that insomuch as [REDACTED] is survived by a minor child,
26
27
28

1 her estate is exempt from reimbursement to DHCS under the law. A true and correct
2 copy of counsel's letter of December 17, 2007, is attached hereto as Exhibit "H."

3 11. In early February 2008, counsel spoke with [REDACTED] of the DCHS
4 regarding the Department's position relative to the lien against the Trust. During the
5 conversation, [REDACTED] requested a copy of the Trust and said copy was mailed to
6 her on February 6, 2008, along with a cover letter reiterating the petitioner's
7 position. In this letter, counsel further noted that if there was no change in the
8 Department's position, then petitioner would seek direction on how to proceed
9 would be sought from the Court. A true and correct copy of counsel's letter is
10 attached hereto as Exhibit "I." There has been no further communication between
11 the parties in this regard.
12

13
14 12. Accordingly, petitioner herein is seeking instructions from this Court as to whether
15 or not reimbursement must be made to the DHCS for medical services provided to
16 [REDACTED] despite her being under the age of 55 at the time Medi-
17 Cal services were provided, and despite being survived by a minor child.
18

19 13. The person to whom notice of hearing on this petition should be provided
20 under Probate Code §17203, aside from petitioner herein who is the current
21 trustee, is the remainder beneficiary, as follows:
22

23 Remainder Beneficiary: [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 At least 30 days before the time set for hearing on the petition, Petitioner shall
27 cause a copy of this petition and notice of hearing to be served on all of the
28 above.

1 14. The GOLDEN STATE POOLED TRUST names potential governmental
2 creditors. In particular, Article One, Section 1.03, and Article Six, Section
3 6.02 of the Trust provide for reimbursement to the Department of Health
4 Services for the State of California for any medical assistance paid on
5 [REDACTED]'s behalf pursuant to 42 U.S.C. 1396p(d)(4)(a) and by the Social
6 Security Programs Operations Manual System (POMS) Paragraph 01120.200.
7 Accordingly, notice has been provided to the following potential
8 governmental creditors. Pursuant to 42 U.S.C. §1396p(d)(4)(c), these include
9 the California Departments of HEALTH SERVICES, MENTAL HEALTH,
10 and DEVELOPMENTAL SERVICES.
11
12

13
14 DEPARTMENT OF HEALTH SERVICES
15 MS 4720, P O Box 997425
16 Sacramento, CA 95899-7425

17 DEPARTMENT OF MENTAL HEALTH
18 1600 9th Street
19 Sacramento, CA 98514

20 DEPARTMENT OF DEVELOPMENTAL SERVICES
21 1600 9th Street
22 Sacramento, CA 98514

23 WHEREFORE, Petitioner prays that the following orders be granted:

- 24 1. All Notices have been provided according to law.
- 25 2. The Court issue an Order affirming that the Department of Health Care Services is not
26 entitled to reimbursement for medical services provided to [REDACTED]
27 pursuant to the exemption provisions of 42 U.S.C. § 1396p(b)(2) and Welfare & Institutions
28 Code § 14009.5;
3. The Court issue an Order authorizing Trustee, NORTH BAY HOUSING COALITION,

1 to distribute all assets remaining in the individual trust account of [REDACTED]
2 after payment of allowable legal fees and administrative expenses to the remainder
3 beneficiary, [REDACTED]; and

4 4. Such other relief be granted that the Court considers proper.

5
6
7 Date: _____, 2008

DOUGLAS CLEVELAND for
NORTH BAY HOUSING COALITION
Petitioner

8
9
10
11 Date: _____, 2008

THE DALE LAW FIRM
By: JENNIFER L. STENEGERG
Attorneys for Petitioners

1 VERIFICATION

2 I, DOUGLAS CLEVELAND, the undersigned and Petitioner herein, declare that I have
3 read the foregoing Petition, and know its contents, which are true and correct to my own
4 knowledge and belief, except as to those matters stated on information and belief, and as to
5 those matters I believe them to be true and correct.

6
7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct.

9 Executed in _____, California.

10
11
12 Date: _____, 2008

13 _____
14 DOUGLAS CLEVELAND