

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

W.N. KLEINERT,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 15-cv-06111 NC

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANT'S CROSS-MOTION
FOR SUMMARY JUDGMENT;
REMANDING FOR AWARD OF
BENEFITS**

Re: Dkt. Nos. 15, 17

Plaintiff W.N. Kleinert seeks judicial review of the Commissioner of Social Security's determination that his Special Needs Trust was funded with his own assets and is therefore a countable resource for purposes of Social Security. An Administrative Law Judge (ALJ) issued a decision in Kleinert's favor, but was reversed after the Appeals Council reopened the case. Because the Court finds that the Appeals Council lacked good cause to reopen the ALJ's fully favorable decision below, the Court GRANTS Kleinert's motion for summary judgment, DENIES Defendant's cross-motion for summary judgment, and REMANDS for an award of benefits.

I. BACKGROUND

A. Facts Presented

Kleinert was born in 1936 and has been completely disabled since the age of 21 due to a left arm amputation and brachial plexus neuropathy. Dkt. No. 2 at 4. He has received

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1 Supplemental Security Income since 1978. (A.R. 257.) Kleinert is the son of Alice G.
2 Kleinert (Alice) and a beneficiary of The Alice G. Kleinert Family Trust (Alice's Trust).
3 (A.R. 33-34.) Alice's Trust was established by Alice in July of 1998 to provide Alice with
4 income during her life. (A.R. 29.) The Trust directs the trustees to distribute the trust
5 residue following Alice's death, but only after payment of "any expenses of last illness and
6 funeral, and any and all income taxes owed by [Alice], or death taxes . . . , or other
7 governmental charges imposed by reason of [Alice's] death" (A.R. 32-33.)

8 Alice died on December 4, 2011. Dkt. No. 2 at 4. Before administration of the Trust
9 was completed, Lynda Forsyth, serving as trustee, petitioned the California Superior Court
10 for the San Mateo County for modification of Alice's Trust. Dkt. No. 2 at 4-5. The
11 Superior Court ordered modification on September 5, 2012, establishing the Walter N.
12 Kleinert Special Needs Trust (SNT) and directing the trustee to distribute to the SNT the
13 share that would have been distributed to Kleinert. *Id.*

14 **B. Procedural History**

15 In August 2014, SSA informed Kleinert that the SNT was a countable resource
16 because it was self-funded and did not include Medicaid payback language. Dkt. No. 2 at
17 5. Kleinert filed a request for a hearing, and on April 29, 2015, the Administrative Law
18 Judge issued a "fully favorable" decision for Kleinert. *Id.* The ALJ held that because
19 Kleinert's interest in the assets in Alice's Trust had not vested, the SNT was a third-party
20 irrevocable trust and therefore not countable as a resource. (A.R. 15-16.)

21 Kleinert received notice in September 2015 of the Appeals Council's intention to
22 reopen the ALJ's decision. Dkt. No. 2 at 5. The Appeals Council determined that
23 Kleinert's interest had vested upon Alice's death. (A.R. 8-9.) Once his interest had vested,
24 Kleinert would have been legally entitled to the trust assets. Therefore, the Council held
25 that the SNT was a first-party trust and that until it contained a Medicaid payback
26 provision it was countable as a resource. Dkt. No. 2 at 5-6. Kleinert then sought judicial
27 review from this Court under 42 U.S.C. § 405(g). Dkt. No. 2 at 3. Both parties moved for
28

1 summary judgment. Dkt. Nos. 15, 17.¹

2 **II. LEGAL STANDARD**

3 A district court has the “power to enter, upon the pleadings and transcript of the
4 record, a judgment affirming, modifying, or reversing the decision of the Commissioner of
5 Social Security, with or without remanding the case for a rehearing.” 42 U.S.C. § 405(g).

6 The Appeals Council is permitted to reopen an ALJ’s final decision within two
7 years of the initial eligibility decision if good cause exists. 20 C.F.R. § 416.1487-88. Good
8 cause exists where “the evidence that was considered in making the determination or
9 decision clearly shows on its face that an error was made.” 20 C.F.R. § 416.1489(a)(3).

10 “While ‘clear’ is itself one of the least clear terms in the language . . . we take it to work
11 some real limitation. In practice it appears that review is routine, reopening rare.”

12 *Sheppard v. Sullivan*, 906 F.2d 756, 759 (D.C. Cir. 1990).

13 **III. DISCUSSION**

14 The central issue presented below was whether Kleinert had legal control of assets
15 used to fund a Special Needs Trust for him. The ALJ determined that because Kleinert’s
16 interest in Alice’s Trust had not vested, the SNT was not funded with his own assets and
17 was a third-party trust. (A.R. 16.) The ALJ followed the guidelines for evaluating third-
18 party trusts in the Program Operations Manual System (POMS) section 01120.200 and
19 determined that the SNT was not countable as a resource. (A.R. 14-16.) In contrast, the
20 Appeals Council determined that Kleinert’s interest vested upon Alice’s death, and that the
21 SNT was therefore funded with Kleinert’s assets and a first-party trust countable as a
22 resource. (A.R. 9-10.)

23 The Commissioner argues that under California law, Kleinert’s interest in Alice’s
24 Trust vested automatically upon Alice’s death. Dkt. No. 17 at 7. Therefore, the
25 Commissioner contends, the SNT was funded with assets to which Kleinert was legally
26 entitled and is a first-party trust subject to the requirement of a Medicaid payback

27 _____
28 ¹ All parties have consented to the jurisdiction of a magistrate judge under 28 U.S.C. §
636(c). Dkt. Nos. 9, 12.

1 provision. *Id.* at 6-9. Plaintiff answers that Kleinert’s trust interest had not vested pending
 2 administration of the trust, and that the SNT is a third-party trust not subject to a Medicaid
 3 payback provision. Dkt. No. 15 at 5-6. Plaintiff also argues that the Appeals Council
 4 lacked good cause to reopen the ALJ’s fully favorable decision. *Id.* at 4. Because the
 5 question of whether good cause existed is dispositive of the case, the Court addresses it
 6 first.

7 **A. Good Cause to Reopen**

8 The Appeals Council is permitted to reopen an ALJ’s final decision within two
 9 years of the initial eligibility decision if good cause exists. 20 C.F.R. § 416.1487-88. Good
 10 cause exists where “the evidence that was considered in making the determination or
 11 decision clearly shows on its face that an error was made.” 20 C.F.R. § 416.1489(a)(3).
 12 The Social Security Program Operations Manual System (POMS) emphasizes that the
 13 Administration may reopen a decision only where it is clear that an error exists: “[a]n error
 14 on the face of the evidence exists where it is *absolutely clear* that the determination or
 15 decision was incorrect.” POMS GN 04010.020 (emphasis in original).

16 The Ninth Circuit has held that a misapplication of law may constitute good cause if
 17 law existing at the time of the decision shows an error on the face of the evidence. *Mines v.*
 18 *Sullivan*, 981 F.2d 1068, 1071 (1992). The 6th and 8th Circuits have likewise held that a
 19 misapplication of law may constitute good cause. *See Munsinger v. Schweiker*, 709 F.2d
 20 1212, 1216 (8th Cir. 1983) (“If the evidence clearly shows the result reached to have been
 21 legally erroneous at the time it was reached, then it may fairly be said that ‘the evidence
 22 that was considered in making the determination or decision clearly shows on its face that
 23 an error was made.’”); *Fox v. Bowen*, 835 F.2d 1159, 1164 (6th Cir. 1987) (“[W]hen the
 24 application of an incorrect legal standard or the misinterpretation of law existing at the
 25 time of the determination is involved the evidence clearly shows on its face that an error
 26 was made.”).

27 A U.S. District Court in the District of Kansas applied *Mines* in *Smith v. Apfel*,
 28 affirming the Appeals Council’s decision to reopen and reverse where an ALJ misapplied

1 state law. *Smith v. Apfel*, 1999 WL 714171, at *2 (D. Kan. Aug. 20, 1999). In *Smith v.*
 2 *Apfel*, a convicted robber had his disability insurance benefits suspended after he was
 3 sentenced to confinement in a state security hospital. *Id.* at *1. The ALJ determined that
 4 the plaintiff retained eligibility for benefits because a Kansas statute distinguished between
 5 psychiatric treatment and confinement by permitting convicted criminals to receive such
 6 treatment “in lieu of confinement or imprisonment.” *Id.* at *1, *3,*4. The Appeals Council
 7 reopened for clear error on the face of the evidence and reversed, finding that a state
 8 security hospital qualified as “confinement” under the Social Security regulation denying
 9 benefits to prisoners: “[A] jail [or] prison . . . is a facility . . . in which *convicted criminals*
 10 *can be incarcerated*. Confinement . . . continues as long as the individual is under a
 11 sentence of confinement and has not been released due to parole or pardon.” *Id.* at *3
 12 (emphasis in original). The district court affirmed. Because a state security hospital fell
 13 within the definition of confinement provided by the Social Security regulation, the ALJ
 14 had clearly erred in applying state law, and the Appeals Council had good cause to reopen
 15 the decision.

16 However, not every misapplication of law is so clear as to show error on its face.
 17 The D.C. Circuit has acknowledged that “[w]hile ‘clear’ is itself one of the least clear
 18 terms in the language . . . we take it to work some real limitation. In practice it appears that
 19 review is routine, reopening rare.” *Sheppard v. Sullivan*, 906 F.2d at 759.

20 1. California Probate Code § 7000

21 As in *Apfel*, the case here presents a question of state law. The Appeals Council
 22 based its determinations upon “the principal of California law that that [sic] when an
 23 individual has an inherited or beneficial interest in a person’s estate upon that person’s
 24 death, said individual has an alienable property interest in his share of the estate as of the
 25 decedent’s death (POMS PS 01405.006).” (A.R. 8.) Both the Appeals Council and PS
 26 01405.006 cite for this principal California Probate Code § 7000, which states that “title to
 27 a decedent’s property passes on the decedent’s death to the person to whom it is devised in
 28 the decedent’s last will or . . . to the decedent’s heirs” Cal. Prob. Code §7000 (West

1 2016). Because the ALJ held that Kleinert's interest had not vested at Mother's death,
 2 § 7000 would show clear error if it applied.

3 It is not clear, however, that § 7000 applies. Section 7000 speaks to when legal title
 4 vests in respect to property devised in wills. The case here deals with property left in trust,
 5 and "depending upon its terms, a trust may serve significantly different purposes than a
 6 will." *Weinberger v. Morris*, 188 Cal. App. 4th 1016, 1022 (2010). Whereas wills are
 7 subject to probate, trusts exist as an alternative to probate.

8 Although revocable trusts are a popular means of avoiding
 9 probate on the settlor's death, administering a decedent's estate
 10 under Division 7 of the Probate Code (Prob C §§ 7000-12591)
 11 may offer the decedent's survivors benefits not available in a
 12 trust administration. . . . All trustees of once-revocable trusts
 13 should consider the benefits and burdens of formal probate
 14 before deciding to forgo the process.

15 C.E.B. OnLaw, California Trust Administration §10.24E. *See also* 1 Cal. Transactions
 16 Forms—Est. Planning §1:18 (" Probate Code § 5000, the key exception from Prob. C.
 17 §7001, lists many documents, including trusts, that avoid probate administration."). Trust
 18 law sits separate and apart from wills, in California Probate Code Division 9 (commencing
 19 with Section 15000). And contrary to the plain-stated instructions of §7000 regarding the
 20 transfer of property in testacy and in intestacy, California courts have held that legal title to
 21 a trust interest passes to the beneficiary only upon termination of the trust, the timing of
 22 which may or may not be upon the death of the settlor but must be determined by the trust
 23 language. *See, e.g., Salvation Army v. Price*, 36 Cal. App. 4th 1619, 1620 (1995) ("When
 24 the objects of a trust have been fully performed the title of the trustee ceases and the legal
 25 as well as the equitable title vest in the beneficial owner . . ."); *Newman v. Frank*, 230
 26 Cal. App. 2d 158, 163 (1964) (emphasizing the construction of trust language in
 27 determining the timing of termination). It is therefore not "clear on its face" that the ALJ
 28 committed legal error by failing to apply § 7000 to Kleinert's trust interest. 20 C.F.R.
 §416.1489(a)(3).

2. POMS "J" Case

In its memorandum to the SSA Office of Appellate Operations, the San Francisco

1 Center for Programs identified three POMS PS cases, “M,” “K,” and “J,” as relevant to
2 Kleinert’s trust interest and determined that the “J” case was most applicable. (A.R.258-
3 60.) The Appeals Council adopted the Center’s reasoning, concluding that the ALJ erred in
4 failing to apply the “analogous” “J” case. In the “J” case, J received a trust interest that
5 was to be distributed when he turned 18 years old. (A.R. 269.) However, when J turned 18
6 the trustee failed to distribute J’s share. *Id.* Thereafter, upon the trustee’s petition a
7 California Superior Court issued an order modifying the trust to transfer to an SNT the
8 share that would have been distributed to J. *Id.* The Regional Chief Counsel opinion held
9 that because J’s interest had vested on his 18th birthday and become a countable resource
10 then, the SNT was not exempt from resource counting. (A.R. 270.)

11 In contrast with the “J” case, here it is not clear that Kleinert’s trust interest had
12 vested prior to modification. A trust interest vests upon termination of the trust, once the
13 trust’s purpose has been fulfilled. Cal. Prob. Code § 15407. Alice’s Trust directed the
14 trustee to distribute the trust after the payment of certain death-related expenses, and there
15 is no evidence in the record showing that these payments were completed. The ALJ’s
16 interpretation of this case as dissimilar to the “J” case does not “clearly shows on its face
17 that an error was made,” and therefore the Appeals Council lacked good cause to reopen
18 the ALJ’s decision. *Mines*, 981 F.2d at 1070.

19 Accordingly, the Court DENIES Defendant’s cross-motion for summary judgment
20 and GRANTS Kleinert’s motion for summary judgment.

21 **IV. CONCLUSION**

22 Because the Appeals Council lacked good cause to reopen the ALJ’s decision, the
23 Court DENIES Defendant’s cross-motion for summary judgment, and GRANTS Kleinert’s
24 motion for summary judgment. Accordingly, the Court REVERSES the decision of the
25 Appeals Council and REMANDS with instructions to the Commissioner of Social Security
26 for an award of benefits consistent with this order.

IT IS SO ORDERED.

Dated: July 8, 2016


NATHANAEL M. COUSINS
United States Magistrate Judge

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

W.N. KLEINERT,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
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Defendant.

Case No. 15-cv-06111 NC

JUDGMENT

In accordance with the Court's July 8, 2016, order granting plaintiff Kleinert's motion for summary judgment and denying the Commissioner's motion for summary judgment, judgment is entered in favor of Kleinert and against the Commissioner with respect to all claims asserted in the complaint. Accordingly, the Court REVERSES the decision of the Appeals Council and REMANDS with instructions to the Commissioner of Social Security for an award of benefits consistent with the July 8 order. The clerk is ordered to terminate case No. 15-cv-06111 NC.

IT IS SO ORDERED.

Dated: July 8, 2016


NATHANAEL M. COUSINS
United States Magistrate Judge

Case No. 15-cv-06111 NC