

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

Docket No. _____

YVONNE R. RICHARDSON, by her)
Conservator Barbara Carlin, and the)
MAINE POOLED DISABILITY TRUST,)
on its own behalf and on behalf of its)
current and future participating)
beneficiaries over age 64, and on behalf)
of all other similarly situated individuals,)

Plaintiffs)

v.)

MARY C. MAYHEW, in her official)
capacity as Commissioner of the MAINE)
DEPARTMENT OF HEALTH AND)
HUMAN SERVICES,)

Defendant)

**CLASS ACTION COMPLAINT
(INJUNCTIVE RELIEF SOUGHT)**

Plaintiffs Yvonne R. Richardson, by her conservator, Barbara Carlin, and the Maine Pooled Disability Trust, on its own behalf and on behalf of its current and future participating beneficiaries over age 64, and on behalf of all other similarly situated individuals, complain against Defendant Mary C. Mayhew, in her official capacity as Commissioner of the Maine Department of Health and Human Services, as follows:

INTRODUCTION

1. This is an action for injunctive and corresponding declaratory relief to require the Defendant Commissioner of the Maine Department of Health and Human Services (the “DHHS”) to cause that Department to cease treating deposits into pooled special needs trusts, including the Maine Pooled Disability Trust (“MPDT” or the “Trust”), by individuals above age 64 as transfers of assets for less than fair market value which result in a penalty period of ineligibility for medical assistance (“Medicaid,” called MaineCare in Maine) long-term care benefits.

2. As a general rule, if an individual is applying for Medicaid for nursing facility, assisted living, or home and community based waiver services, and has made a transfer of assets for less than fair market value to another person within the prior sixty (60) months, that transfer will disqualify the individual for that Medicaid coverage for a “penalty period” computed based on the amount of the transfer. This action concerns whether that general anti-transfer rule, in 42 U.S.C. § 1396p(c), applies to special needs trusts, which are governed by another provision, 42 U.S.C. § 1396p(d), addressing transfers to trusts specifically, and from which pooled special needs trusts are exempted by 42 U.S.C. § 1396p(d)(4)(C).

3. The DHHS treats the funding of pooled special needs trusts by individuals above age 64 as a transfer of assets for less than fair market

value and imposes a penalty period of Medicaid ineligibility on those individuals for nursing facility, assisted living, or home and community based services pursuant to 42 U.S.C. § 1396p(c). The Plaintiffs contend that these transfers are for fair market value, and thus not subject to such a penalty; and the Plaintiffs contend that by applying the general transfer of assets statute under § 1396p(c) the DHHS is violating 42 U.S.C. § 1396p, because § 1396p(d), which concerns special needs trusts, does not authorize such a penalty, and § 1396p(c) does not apply to the funding of pooled special needs trusts.

JURISDICTION

4. This court has federal question jurisdiction over this action under 28 U.S.C. § 1331.

PARTIES

5. Plaintiff Yvonne R. Richardson is a resident of Cumberland County, Maine. She appears by Barbara Carlin, who was appointed as Conservator for Ms. Richardson by the Cumberland County Probate Court.

6. Plaintiff MPDT is a corporation established under the laws of the State of Maine with its principal office and place of business in York County, Maine; it is a pooled special needs trust under 42 U.S.C. § 1396p(d)(4)(C). Funds deposited into the Trust by disabled individuals are not counted as

resources available to those individuals under the Medicaid or Supplemental Security Income (“SSI”) programs.

7. Defendant Mary C. Mayhew is Commissioner of the DHHS and as Commissioner is responsible for the administration of the Medicaid program in the State of Maine; she has her principal office in Kennebec County, Maine, and the DHHS has an office in Cumberland County. Her actions in this case have been and continue to be taken under color of law.

CLASS ACTION ALLEGATIONS

8. This action is brought on behalf of all individuals who are now or may in the future be participants in a pooled special needs trust, including the MPDT, who are above age 64 at the time they deposit funds into the pooled special needs trust, who are at the time receiving, or may within sixty (60) months apply for, Medicaid for nursing facility, assisted living, or home and community based waiver services through the DHHS, and for which a transfer of assets penalty may be imposed.

9. The class is so numerous that joinder of all persons similarly situated is impracticable; on information and belief, based on records of the MPDT and information from attorneys throughout the State of Maine, there are in excess of fifty (50) individuals currently enrolled or who would be eligible to enroll in the MPDT or any other pooled special needs trust, and for whom a transfer of assets penalty for Medicaid eligibility could be imposed by

the DHHS because of their deposits into that trust. Since its inception in 2002 through 2016 the MPDT has enrolled 171 disabled individuals as participants, including forty-three (43) who were over age 64 at the time of their enrollment.

10. There are questions of law common to all the members of the class, namely whether the DHHS may treat their deposits into the MPDT or another pooled special needs trust as a transfer of assets for less than fair market value and impose a penalty period of Medicaid ineligibility for nursing facility, assisted living, or home and community based waiver services because of those deposits as provided in Part 16, section 4.53(A)(6)(b) of the MaineCare Eligibility Manual, a copy of which is attached as Exhibit "A."

11. The claims of Plaintiffs are typical of the claims of class members, all of whom would benefit from a determination that they may make deposits to the MPDT or any other pooled special needs trust without being subject to a penalty period of Medicaid ineligibility for nursing facility, assisted living, or home and community based waiver services. There is no conflict of interest between Plaintiffs and the class, all of whom would benefit from a judgment in favor of Plaintiffs and the class.

12. Plaintiffs will fairly and adequately protect the interests of the class; they are represented by counsel experienced in federal court litigation including class actions and claims concerning Medicaid eligibility and special needs trusts.

13. Defendant has acted on grounds that apply generally to the class, namely by causing the DHHS to apply a policy that any deposits into the MPDT or any other pooled special needs trust are transfers of assets for less than fair market value and imposing a penalty period of Medicaid ineligibility for nursing facility, assisted living, or home and community based waiver services because of those deposits, so that final injunctive or corresponding declaratory relief is appropriate respecting the class as a whole.

FACTS COMMON TO ALL COUNTS

14. Plaintiff Yvonne R. Richardson is an 87-year old resident of St. Joseph's Manor nursing facility in Portland, Maine.

15. Ms. Richardson was receiving Medicaid benefits to help pay for the cost of her nursing facility care, but when her former home was sold and \$38,500 of the sale proceeds was deposited into the MPDT in January, 2017, the DHHS issued a notice terminating her Medicaid coverage for her care at St. Joseph's Manor effective April 1, 2017. A copy of that notice is attached as Exhibit "B."

16. Ms. Richardson timely requested an administrative “fair hearing” to contest that DHHS decision, so pending a decision in that hearing her Medicaid benefits have been continued.

17. The MPDT trust agreements, copies of which are attached as Exhibit “C,” impose a duty on the trustees to use the funds deposited by Ms. Richardson for her benefit, including, for example, as set forth in sections 2.6 and 6.1 of the trust agreement, “medical or nursing not provided by programs of governmental assistance, supportive social services, education, training, case management services, private rehabilitative therapy, transportation, recreation, vacations or outings, telephone or television service, or other supplemental needs which will contribute to the good health, safety and welfare of a Beneficiary,” and the trust is intended to provide extra and supplemental services and benefits “for the care, comfort, welfare, or training of the Designated Beneficiary.”

18. The Sponsor Agreement, a copy of which is attached as Exhibit “D,” by which an individual agrees to participate in the MPDT, provides in section 32.B that after payment of legal obligations of the trust, fifty (50%) percent of the funds remaining in the beneficiary’s sub-account must be used to reimburse the State of Maine (and any other state which has paid Medicaid benefits on behalf of the beneficiary), for the total amount of Medicaid paid on behalf of the beneficiary.

19. Ms. Richardson had a hard life, and the Trust could make modest expenditures that would greatly improve her quality of life. Ms. Richardson worked for some 38 years as a custodian at a local diner, and suffered over those years at the hands of a physically and emotionally abusive husband. She could benefit from the purchase of large print, word search and crossword puzzle books, which she loves, new clothing to replace her current tattered clothes, sweets, manicures, magazines and a radio for music. Most helpful to her would be a private caregiver who could bring her on outings and get her out of her room; due to anxiety she is very reluctant to leave her room and spends most of her day in bed. She cannot afford these services on the modest \$40 a month personal needs allowance she is permitted to retain from her income under the Medicaid program, but they could be paid for by the MPDT sub-account established for her. A conservator was appointed for her because she has no one who will provide any additional services or care for her.

COUNT ONE

20. By virtue of the foregoing, the policy of the DHHS, which the Defendant oversees, to treat deposits to the MPDT by individuals over age 64 as transfers of assets for less than fair market value, violates 42 U.S.C. §§ 1396a(a)(18) and 1396p, for which relief may be granted pursuant to 42 U.S.C. § 1983, since Plaintiff Richardson and others similarly situated

receive fair market value from the expenditures the MPDT can make on their behalf pursuant to its fiduciary duties to them.

COUNT TWO

21. By virtue of the foregoing, the policy of the DHHS, which the Defendant oversees, to treat deposits to the MPDT by individuals over age 64 as transfers of assets for less than fair market value, violates 42 U.S.C. §§ 1396a(a)(18) and 1396p(d), for which relief may be granted pursuant to 42 U.S.C. § 1983, since no statute imposes a transfer of assets penalty for transfers to an exempt pooled special needs trust such as the MPDT.

WHEREFORE, Plaintiffs pray for judgment:

- 1) Declaring that Defendant's policy of treating the deposit of funds into a pooled special needs trust like the MPDT by individuals over age 64 as a transfer of assets for less than fair market value and imposing a penalty period of ineligibility for Medicaid coverage for nursing facility, assisted living or home and community based waiver services is illegal, null and void.
- 2) Enjoining Defendant from causing the DHHS to impose a penalty period of ineligibility for Medicaid coverage for nursing facility, assisted living, or home and community based waiver services if an individual over age 64 deposits

funds into a pooled special needs trust like the MPDT, effective three calendar months prior to the month the court so orders, pursuant to 42 U.S.C. § 1396a(a)(34).

- 3) Awarding Plaintiffs such other and further relief as may be proper and just, including recovery of their costs and attorney's fees pursuant to 42 U.S.C. § 1988.

Dated: April 13, 2017.

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