

TUESDAY, JANUARY 10, 2012  
10:00 A.M.

NO. 2

#25536

**In Re: POOLED ADVOCATE TRUST**

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The Honorable Jeff W. Davis (TRU 04-240)  
Seventh Judicial Circuit  
Pennington County

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#25902

**FRED MATTHEWS and**  
**GLADYS MATTHEWS,**  
**Appellants,**  
**vs.**

**SOUTH DAKOTA DEPARTMENT**  
**OF SOCIAL SERVICES,**  
**Appellee.**

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The Honorable Janine Kern (CIV 10-345)  
Seventh Judicial Circuit  
Pennington County

STATEMENT OF THE ISSUE

**ISSUE: WHETHER THE TRIAL COURT ERRED BY GRANTING PATI'S PETITION AND APPLICATION FOR FURTHER RELIEF ON DECLARATORY JUDGMENT AND ENTERING AN ORDER BARRING THE DEPARTMENT FROM IMPOSING A MEDICAID TRANSFER PENALTY BASED ON A BENEFICIARY'S AGE AT THE TIME A BENEFICIARY FUNDS A SUB-ACCOUNT WITH THE POOLED ADVOCATE TRUST FOR THAT BENEFICIARY'S BENEFIT?**

The trial court granted the relief requested in PATI's Petition and ordered that the Department is barred from imposing a Medicaid divestment penalty based on a beneficiary's age at the time a beneficiary funds a sub-account with the Pooled Advocate Trust for that beneficiary's benefit. HT 4-5; SR 401. The trial court further stated that it was refraining from issuing any specific ruling as to the Medicaid eligibility of any particular trust beneficiary because determinations on whether or not an individual qualifies for assistance under the South Dakota Medicaid Program are to be made by the Department. SR 401; 402.

**Most relevant cases:**

Cable v. Union County Board of County Commissioners, 2009 SD 59, 769 NW2d 817

Guardianship of Sasse, 363 NW2d 209 (SD 1985)

Keith v. Rizzuto, 212 F3d 1190 (10<sup>th</sup> Cir. 2000)

Hobbs v. Zenderman, 579 F3d 1171 (10<sup>th</sup> Cir. 2009)

**Most relevant statutes:**

42 USC § 1396p, ARSD 67:46:05:17

STATEMENT OF ISSUES

- I. Whether the Circuit Court erred when it rejected Appellants' arguments that the administrative law judge's conclusions were based on an error of law, specifically, that transfers into the PATI, a pooled trust, are made for less than fair-market value and therefore trigger a divestment penalty?
- II. Whether, as a matter of law, a transfer penalty period of Medicaid eligibility purposes for transfers of assets

into a pooled trust by Medicaid applicants age 65 and older is in violation of 42 USC 1396p?