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ZARELLA, J., with whom SULLIVAN, C. J., joins, dissenting. The majority concludes that the trial court properly determined that the doctrine of collateral estoppel did not preclude the administrative hearing officer's construction of the trust. Because I disagree with this conclusion and because the applicability of the doctrine of collateral estoppel is dispositive in this case, I respectfully dissent.

I will set forth the relevant facts of this case for the sake of clarity, recognizing that my review of the facts may repeat portions of the facts contained in the majority opinion. On November 3, 1987, the testator, Lyman M. Corcoran, executed a will that took effect on May 29, 1989, the date of his death. The will contained a provision that created a trust fund for the benefit of the plaintiff, Pamela D. Corcoran. The testator appointed the plaintiff's two sisters, Robin C. Turek and Imogen J.C. Kellogg, as trustees.[1]

After the testator's death, the plaintiff applied for and received medicaid benefits, which commenced on November 28, 1989.[2] On February 26, 2001, the defendant, the department of social services (department), discontinued these benefits, effective March 31, 2001, when it determined that the plaintiff was ineligible for assistance because her ''available assets'' from the trust exceeded the prescribed limits.

On February 13, 2001, approximately two weeks prior to the department's discontinuation of the plaintiff's benefits, the trustees petitioned the Probate Court to construe the terms of the trust to determine whether the trust assets were ''vulnerab[le] to the claims of the . . . [department] that the trust assets were 'available' to the [plaintiff].'' The department, the trustees and the plaintiff were parties to the Probate Court proceeding and participated in the hearing on this matter on May 4, 2001.

The Probate Court thereafter issued its order on June 12, 2001. In its order,[3] the Probate Court concluded that ''[t]he trust at issue is . . . a 'special needs, discretionary trust' not otherwise available to the state of Connecticut or other creditors of the trust beneficiary [i.e., the plaintiff] for her care and support.'' The court further concluded that ''[t]he trustees have the authority and power to consider all other sources of principal and income, other than those of the trust, including payments by the state of Connecticut and others, before utilizing the assets of the trust for the [plaintiff's] benefit.'' The court therefore determined that ''[t]he trust assets are not available to the claims of the state of Connecticut for past or future care, except as specifically authorized and approved by the trustees in their

sound discretion.''

On March 28, 2001, before the Probate Court issued its order but after the trustees had commenced the action in the Probate Court, the plaintiff appealed from the department's decision to discontinue her medicaid benefits to an administrative hearing officer (hearing officer). Both the department and the plaintiff were parties to this appeal and participated in the hearings held on April 26, 2001, and May 31, 2001.

On July 12, 2001, one month after the Probate Court had issued its order, the hearing officer issued a ruling on the hearing record, in which she declared: ''I rejected and ignored any correspondence sent after June 8, 2001. The record had closed.'' The hearing officer therefore did not consider in her decision the June 12, 2001 order of the Probate Court construing the trust.[4]

Subsequently, on July 17, 2001, the hearing officer rendered her decision upholding the department's discontinuation of the plaintiff's medicaid benefits because she determined that the plaintiff's share of the trust qualified as an ''asset available'' to her for purposes of medicaid eligibility.[5] Thereafter, on July 23, 2001, the department filed a request for reconsideration of the July 17 decision on the basis of the hearing officer's erroneous reliance on a regulation in that decision. The request was granted, and the hearing officer issued an amended decision on August 20, 2001.[6]

In her amended decision, the hearing officer found that ''[t]he [plaintiff] did not have a disabling impairment at the time [the testator] signed his will,'' and that ''[t]he income and/or corpus of the trust are available for the [plaintiff's] use or benefit.'' The hearing officer determined that ''[t]he trustees can make or have made payments from the trust to or on behalf of the [plaintiff],'' and, therefore, that ''[t]he trust is not exempt from consideration as an asset in determining the [plaintiff's] ongoing eligibility for assistance from the [department].'' The hearing officer further determined that the plaintiff's trust assets exceeded the maximum allowed for medicaid eligibility and that the department properly had discontinued her benefits. In conclusion, the hearing officer stated that, ''by their actions and imputed intentions, the trustees have shown circumstances under which they can and will make a payment from the trust to or on behalf of the [plaintiff],'' and, ''[u]nder the regulations . . . I find that the trust is an asset available to the [plaintiff].''

The plaintiff appealed from the adverse decision of the hearing officer to the trial court, which affirmed the hearing officer's decision. The plaintiff then appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

The majority concludes that ''the issue presented to, and decided by, each tribunal was not identical'' and that ''[t]he hearing officer, therefore, was not bound by the principles of collateral estoppel.'' The record reveals, however, that the parties litigated, and the two tribunals necessarily decided, the same issue.

As this court previously has observed, ''[t]he common-law doctrine of collateral estoppel, or issue preclusion, embodies a judicial policy in favor of judicial economy, the stability of former judgments and finality. . . . Collateral estoppel means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit. . . . Issue preclusion arises when an issue is actually litigated and determined by a valid and final judgment, and that determination is essential to the judgment. . . . *Cumberland Farms, Inc.* v. *Groton*, 262 Conn. 45, 57–58, 808 A.2d 1107 (2002). . . . An issue is actually litigated if it is properly raised in the pleadings or otherwise, submitted for determination, and in fact determined. . . . *An issue is necessarily determined if, in the absence of a determination of the issue, the judgment could not have been validly rendered*. . . . If an issue has been determined, but the judgment is not dependent upon the determination of th[at] issue, the parties may relitigate the issue in a subsequent action.'' (Emphasis added; internal quotation marks omitted.) *DaCruz* v. *State Farm Fire & Casualty Co.*, 268 Conn. 675, 686, 846 A.2d 849 (2004).

This court also has maintained that, ''[i]n order for collateral estoppel to bar the relitigation of an issue in a later proceeding, the issue concerning which relitigation is sought to be estopped must be identical to the issue decided in the prior proceeding. . . . '[T]he court must determine what facts were necessarily determined in the first trial, and must then assess whether the [party] is attempting to relitigate those facts in the second proceeding.' '' *Aetna Casualty & Surety Co.* v. *Jones*, 220 Conn. 285, 297, 596 A.2d 414 (1991), quoting *State* v. *Hope*, 215 Conn. 570, 584, 577 A.2d 1000 (1990), cert. denied, 498 U.S. 1089, 111 S. Ct. 968, 112 L. Ed. 2d 1054 (1991); see also *State* v. *Joyner*, 255 Conn. 477, 490, 774 A.2d 927 (2001). ''We review collateral estoppel claims de novo.'' *State* v. *Joyner*, supra, 490.

I

I first examine whether the hearing officer's finding concerning the availability of trust assets to the plaintiff was ''necessarily determined in the first [proceeding], and . . . then assess whether the [department] is attempting to relitigate [this issue] in the second proceeding.'' *Aetna Casualty & Surety Co.* v. *Jones*, supra, 220 Conn. 297.

According to the majority, the issue raised in the

administrative hearing was ''whether the trust constituted an asset available to the plaintiff . . . .'' The majority characterizes the issue before the Probate Court as whether ''the trust was not available to the plaintiff's creditors . . . .'' The majority determines that the issues are different because one concerns a creditor's right to reach the trust assets whereas the other involves the plaintiff's right to reach the trust assets. The majority also insists that ''[t]he Probate Court's opinion is notable for what it did not conclude, namely, whether the plaintiff had a legal right to compel distribution from the trust,'' and that, ''although the Probate Court determined that the trust is not available to the state as a potential creditor, it did not consider whether the trust is available to the plaintiff as a matter of law.'' Accordingly, the majority concludes that ''the hearing officer was not estopped from construing the trust in relation to the plaintiff's rights because the Probate Court's decision did not address the plaintiff's rights to the trust.'' I respectfully disagree with the majority.

The majority concedes that the department ''urged the [Probate Court] not to proceed with the hearing scheduled for May 4, 2001,'' because ''it already had litigated this 'exact issue,' namely, the proper construction of the trust, before the hearing officer . . . .'' Indeed, the regulation[7] upon which the hearing officer based her conclusions underscores the symmetry of the issues necessarily determined because the factors that a hearing officer must consider in assessing medicaid eligibility if the potential recipient is a trust beneficiary are comparable to the factors that a court examines in construing the nature of a trust. See, e.g., *Zeoli* v. *Commissioner of Social Services*, 179 Conn. 83, 90–91, 425 A.2d 553 (1979) (factors to be considered include language of trust and circumstances surrounding its execution, degree of discretion afforded to trustee and value of trust). Therefore, just as the Probate Court was required to determine whether ''the trust assets were 'available' to [the plaintiff],'' the hearing officer, too, was required to decide ''whether the corpus, or principal of such a trust [was] an [asset] available'' to the plaintiff. Dept. of Social Services, Uniform Policy Manual, index 4030.80 (B) (1).

The majority further concedes that the Probate Court recognized its duty, in the court's own words, ''to construe the will of the [testator] in the context of the trust's vulnerability to the claims of the . . . [department] *that the trust assets were 'available' to the* [*plaintiff*].'' (Emphasis added.) The majority, however, dismisses the Probate Court's statement of the issue to be decided because ''[t]he Probate Court . . . did not phrase its order or its analysis in terms of availability to the plaintiff.'' Footnote 17 of the majority opinion.[8]

I believe that the majority misconstrues the Probate

Court's order. In its order, the Probate Court expressly adopted the findings and recommendations of the committee,[9] which reasoned that the trustees could not consider making a distribution for the plaintiff's past or future care and support without taking into account all of the plaintiff's other income and assets, including any public welfare benefits to which the plaintiff was entitled.[10] The Probate Court's determination that the trust assets were not available to the claims of the department or other creditors thus was based upon the Probate Court's finding that the trust assets were not available to the plaintiff.

The majority suggests that the dissent is concluding that "[t]he right of a creditor to reach the trust is . . . *determinative* of the right of the beneficiary to do so." (Emphasis added.) That is not the case. I merely agree with the well established principle that "[a] transferee or creditor of a trust beneficiary cannot compel the trustee to make discretionary distributions if the beneficiary personally could not do so." 2 Restatement (Third), Trusts § 60, comment (e), p. 409 (2003). A creditor's rights to reach the assets of a trust are coextensive with a beneficiary's right to reach those assets; that is, the creditor has no greater rights to the trust assets than the beneficiary possesses. See, e.g., *Loeb* v. *Loeb*, 261 Ind. 193, 205, 301 N.E.2d 349 (1973) ("[i]f the beneficiary himself cannot compel the trustee to pay over any part of the trust fund, his assignee and his creditors are in no better position" [internal quotation marks omitted]); IIA A. Scott, Trusts (4th Ed. 1987) § 155, pp. 153–54 (same); see also G. Bogert, Trusts and Trustees (2d Ed. Rev. 1992) § 228, pp. 525–26 ("Until the trustee elects to make a payment the beneficiary has a mere expectancy. Nor can a creditor compel the trustee to exercise his discretion to make payments. If . . . [the beneficiary's] creditors seek to take [the beneficiary's interest], before the trustee has made an election to pay or apply, the . . . creditor has no remedies against the trustee because he stands in the shoes of the beneficiary.").

This court addressed a similar question involving nearly identical facts in *Zeoli* v. *Commissioner of Social Services*, supra, 179 Conn. 83. In *Zeoli*, the defendant commissioner of social services (commissioner) terminated medical assistance payments to the plaintiffs, two mentally handicapped sisters, on the ground that the plaintiffs had assets available to them in excess of the prescribed limits. Id., 84–85. The assets consisted of a joint savings account that was held in the name of the plaintiffs' brother as trustee, with the plaintiffs as beneficiaries. Id., 85. In determining that the savings account constituted an asset of a spendthrift testamentary trust, this court concluded that "[t]he plaintiffs [could not] compel distribution or in any manner alienate the [trust funds] beyond that authorized to be distributed as supplementary support in the trustee's

discretion''; id., 95; and, therefore, the commissioner could not terminate the plaintiffs' medical assistance benefits. See id., 97; see also *Carter* v. *Brownell*, 95 Conn. 216, 224, 111 A. 182 (1920) (recognizing that previous cases had ''decided . . . that where trustees were given, as in the will before the court, discretionary power to give or [to] withhold from a beneficiary income, he was incapable of alienating it and his creditors could not take it''); *Huntington* v. *Jones*, 72 Conn. 45, 50, 43 A. 564 (1899) (''As the beneficiary could [compel distribution of the trust income], so a creditor of the beneficiary may do it. Equity allows the creditor to avail himself of the interest which the beneficiary has.'').[11] Accordingly, in determining a creditor's right to reach trust assets, this court's precedent and other legal authority inform us that an analysis of the beneficiary's right to compel distribution of the funds is an inherent part of this determination.

The majority states that *Zeoli* undermines the conclusion that the rights of a creditor are coextensive with the rights of a beneficiary. According to the majority, the court in *Zeoli* first analyzed the right of the creditor to reach the assets held in trust for the beneficiaries, and, only after determining that the creditor did not have access to the trust funds did the court consider whether the funds were available to the beneficiaries. The majority thus asserts that, if the rights of creditors are coextensive with those of beneficiaries, there would have been no need for this court to conduct a separate analysis of the beneficiaries' rights to the assets of the trust. I disagree with the majority's characterization of *Zeoli*.

In *Zeoli*, the court did not undertake a two part analysis of the issue, as the majority suggests. In analyzing the right of the creditor to reach the assets held in trust for the beneficiaries, the court concluded that ''[a] trust [that] creates a fund for the benefit of another, secures it against the beneficiary's own improvidence, and places it beyond the reach of his creditors is a spendthrift trust. . . . Section 52-321 of the General Statutes provides that trust fund income is not subject to the claims of creditors of the beneficiary if the trustee is granted the power to accumulate or [to] withhold trust income [from the beneficiary] or if the income has been expressly given for the support of the beneficiary or his family. . . . Since . . . [the] will specifically provides the trustee with the power to accumulate and [to] withhold trust income, its language creates a spendthrift trust under § 52-321.'' (Citations omitted.) *Zeoli* v. *Commissioner of Social Services*, supra, 179 Conn. 88. Our reference in *Zeoli* to the trustee's ''power to accumulate and [to] withhold trust income''; id.; makes sense only if understood to mean the trustee's power to accumulate and to withhold such income from a beneficiary of the trust. Moreover, the court explicitly recognized that a spendthrift trust secures the assets

against the beneficiary's own improvidence. Id. The court in *Zeoli* thus equated a creditor's rights to reach the assets of a trust with those of the trust's beneficiaries. See id.

Furthermore, the ''second'' portion of the *Zeoli* opinion, which focused on the rights of the beneficiaries, addressed specific arguments raised by the commissioner, some of which concerned the intent of the testator to make the assets of the trust available to the beneficiaries. Id., 88–91. In its analysis, the court explained why each argument was unpersuasive. See id., 90–92. The court's response to the commissioner's arguments thus supported, but was not essential to, its prior conclusion that the rights of creditors to the assets of a trust were the same as the rights of beneficiaries.

It also should be recognized that, although the Probate Court labeled the trust created for the benefit of the plaintiff as a ''special needs'' trust, the court did not mean ''special needs'' as defined by the majority or the federal statute to which it cites.[12] Rather, the Probate Court actually meant to label the trust as a ''supplemental needs'' trust. In its report, the committee addressed the contrasting claims of the parties, describing the arguments as a dispute between whether the trust qualified as one for the plaintiff's ''general support'' or one for her '' 'special needs.' '' Under a ''special needs'' trust, as defined by federal statute[13] and by the majority, however, the state *will* receive the funds remaining in the trust upon the beneficiary's death. Such a provision does not exist in the trust in the present case. If the Probate Court truly had intended to classify the trust, and the trustees' claims concerning the trust, as a ''special needs'' trust as defined by the majority, then no controversy would have arisen between the parties because a ''special needs'' trust, under the definition advanced by the majority, gives the state the right to access the trust funds. Thus, the Probate Court could not have intended to construe the trust in such a way, and clearly intended to equate a ''special needs'' trust with a ''supplemental needs'' trust.

Moreover, the trustees' petition to the Probate Court likewise uses the term ''special needs'' trust, but obviously could not have intended such a classification in the manner defined by the majority. Instead, the trustees made clear that they were seeking ''a ruling classifying [the] trust as a 'special needs' trust, *from which it is neither appropriate nor required to reimburse* [*the*] *state for benefits received by* [*the plaintiff*] . . . .'' (Emphasis added.) In their petition, the trustees also highlighted the provisions in the trust granting them discretion to disburse funds and requiring them to consider other sources of support to the plaintiff and '' 'the advisability of supplementing such income or assets.' '' On the basis of these provisions, the trustees described the intention of the testator that the trust ''be used,

in the discretion of the trustees, to supplement, not supplant, such benefits, and the trustees believe that their administration of [*the*] *trust is in accordance with that intention*.'' (Emphasis added.) Thus, it is beyond serious debate that the trustees in fact intended to ask for a construction of the trust as a ''supplemental needs'' trust that is unreachable by the state.

In light of the fact that the Probate Court determined, and the trustees in fact claimed, that the will established a trust for the plaintiff's supplemental needs, it is further apparent that the Probate Court necessarily determined that the trust assets were not available to the plaintiff. As the majority itself recognizes, and our precedent makes clear, ''supplemental needs trusts, in which a trustee retains unfettered discretion to withhold the income, *are not considered available to the beneficiary*. *Connecticut Bank & Trust Co.* v. *Hurlbutt*, 157 Conn. 315, 327, 254 A.2d 460 (1968) (spendthrift trust not open to alienation or assignment by anyone until paid over to beneficiary); *Bridgeport-City Trust Co.* v. *Beach*, [119 Conn. 131, 141, 174 A. 308 (1934)] (beneficiary may not alienate or assign interest of spendthrift trust).'' (Emphasis added.) Part II of the majority opinion; see also *Zeoli* v. *Commissioner of Social Services*, supra, 179 Conn. 90, 92, 95 (concluding that trust was created for beneficiaries' supplementary support, that because ''the assets held in the spendthrift trust were not intended for the [beneficiaries'] general support, they could not compel their distribution,'' and that beneficiaries could not ''compel distribution or in any manner alienate the money in the account beyond that authorized to be distributed as supplementary support in the trustee's discretion'').

Accordingly, in my view, the majority makes a distinction without a difference, as the Probate Court previously had necessarily determined the issue later decided by the hearing officer regarding the availability of the trust assets to the plaintiff.

II

I next must determine whether the parties ''actually litigated'' this issue, whether the Probate Court and the hearing officer ''determined [the issue] by a valid and final judgment,'' and whether ''that determination [was] essential to the judgment.'' (Internal quotation marks omitted.) *DaCruz* v. *State Farm Fire & Casualty Co.*, supra, 268 Conn. 686, quoting *Cumberland Farms, Inc.* v. *Groton*, supra, 262 Conn. 58.

In their petition to the Probate Court for construction of the trust under the will, a proceeding in which the department was a party, the trustees requested that the court ''construe the terms of [the] trust as they pertain to any rights the state of Connecticut . . . may have to claim reimbursement from the trust for benefits heretofore provided to the [plaintiff] by [the] state, and/

or for any such benefits provided by the state to the [plaintiff] in the future.'' The report of the committee, which the Probate Court incorporated by specific reference in its order, sets forth the arguments of the parties as follows: ''[T]he trustees maintain [that] the testator intended the assets of the trust be used to supplement whatever other income and assets are available to the [plaintiff]. [The department] disagrees and argues that the trust is one providing for the general support of the [plaintiff] and that the trust principal and income should be distributed to [the plaintiff].''

In its June 12, 2001 order, the Probate Court acknowledged that the trustees had asked it ''to construe the will . . . in the context of the trust's vulnerability to the claims of . . . the [department] that the trust assets were 'available' to the [plaintiff].'' Upon consideration of the evidence, the Probate Court determined that ''[t]he trust at issue [was] a 'special needs, discretionary trust,' not otherwise available to the state . . . .''

By comparison, at the administrative hearing, the department presented its claim that, ''based upon existing case law and the way that the trust is written by [the testator] . . . the trust is a general support trust and . . . was intended to provide for the needs of [the plaintiff] and there is nothing in the trust to so indicate that it is to be used only as a supplemental needs [trust].'' In its request for reconsideration of the hearing officer's July 17, 2001 decision, the department recognized that ''[t]o determine whether the present trust is an available asset of [the plaintiff], the hearing officer needed to determine whether the trust is a general support [trust] or a discretionary supplemental needs trust.''[14]

At the administrative hearing, the plaintiff stated that ''[t]he issues in [the] construction action [in the Probate Court] are identical to the issues [in] the administrative hearing . . . .'' Moreover, the plaintiff asserted that application of the relevant case law ''leaves no doubt as to the fact that this [trust] is intended to be a supplemental needs trust, not a general support trust.''

After receiving evidence, the hearing officer found that ''[t]he [department's] reason for discontinuing the [plaintiff's] benefits was [that] '[t]he value of [her] assets [was] more than the amount [the department] allow[s] [her] to have.' '' The hearing officer also determined, contrary to the determination of the Probate Court, that ''[t]he corpus and income of the trust are an available asset to the [plaintiff].'' Furthermore, unlike the Probate Court, the hearing officer concluded that ''[t]he trust is not exempt from consideration as an asset in determining the [plaintiff's] ongoing eligibility for assistance from the [department],'' and that ''the [department's] action to discontinue the [plaintiff's] benefits . . . was correct.''

From an examination of the arguments advanced by the parties in both proceedings, there is no question that they actually litigated the issue regarding the nature of the plaintiff's trust assets before the Probate Court and the hearing officer. In both proceedings, the parties[15] asked the Probate Court and the hearing officer to determine whether the trust assets were ''available'' to the plaintiff.

Moreover, as is evident from the Probate Court's order and the hearing officer's decision, the key fact necessarily determined by the Probate Court, and relitigated subsequently in the administrative appeal, was the determination of the character of the plaintiff's trust funds as either available assets or unavailable assets. Although the majority posits that it ''cannot conclude that the Probate Court's characterization of the trust as a 'special needs, discretionary trust' necessarily determined the issue in the present case, namely, whether the trust was an asset available to the plaintiff,'' the explicit language of the Probate Court's clear statement of the issue, its declaration in its order that the trust assets were ''not otherwise available to the state of Connecticut or other creditors of the [plaintiff] for her care and support,'' the necessary implication from this determination that the plaintiff could not access the trust funds, and the fact that the Probate Court equated a ''special needs'' trust with a ''supplementary needs'' trust, the assets of which are unreachable by the plaintiff, all serve to refute this supposition.[16] Contrary to the majority's assertion, therefore, the Probate Court's determination in this regard was ''essential to the judgment''; (internal quotation marks omitted) *DaCruz* v. *State Farm Fire & Casualty Co.*, supra, 268 Conn. 686; because the availability of the trust assets constituted the decisive issue presented to and determined by the Probate Court.

Accordingly, because the parties actually litigated, and both the Probate Court and the hearing officer necessarily determined, the issue of the availability of the trust assets to the plaintiff, I believe that the doctrine of collateral estoppel precluded the hearing officer's subsequent construction of the trust[17] and that the Probate Court's order should have been conclusive with respect to this matter. I therefore would reverse the judgment of the trial court to the contrary.

Accordingly, I respectfully dissent.

[1] I hereinafter refer to Turek and Kellogg collectively as the trustees.

[2] The defendant, the department of social services, made the benefits effective retroactively to June 1, 1988.

[3] The Probate Court, *Kurmay, J.*, appointed *Capuano, J.*, as a committee, pursuant to General Statutes § 45a-123, and incorporated the committee's written report by specific reference in its order.

[4] The hearing officer was aware that the trustees sought to have the Probate Court construe the trust.

[5] The plaintiff requested reconsideration of the July 12 ruling and July 17 decision, claiming that ''the department should reconsider the decisions due to new evidence which has become available since June 8, 2001, the [effec-

tive] date the hearing record was closed.'' The department director denied the request, however.

[6] The hearing officer stated that the August 20, 2001 decision ''replaces the decision issued on July 17, 2001.''

[7] Index 4030.80 (B) of the Uniform Policy Manual of the department of social services provides: ''1. The Department determines whether the corpus, or principal of such a trust is an available asset by referring to the terms of the trust and the applicable case law construing similar instruments.

''2. The principal of such a trust is an available asset to the extent that the terms of the trust entitle the individual to receive trust principal or to have trust principal applied for his or her general or medical support.

''3. Under circumstances described in subparagraph 2 above, the trust principal is considered an available asset if the trustee's failure to distribute the principal for the benefit of the individual in accordance with the terms of the trust would constitute an abuse of discretion by the trustee.

''4. The Department considers the following factors in determining whether the trustee would be abusing his or her discretion by refusing to distribute trust principal to the individual:

''a. the clarity of the settlor's intention to provide for the general or medical support of the individual; and

''b. the degree of discretion afforded to the trustee; and

''c. the value of the trust created, with a higher dollar value tending to indicate an intent to provide for general or medical support; and

''d. the history of trust expenditures prior to the filing of an application for assistance for or on behalf of the individual.''

[8] The trust document describes the relationship between the testator, the trustees and the plaintiff only; it does not bind third parties, such as the department, in any manner, nor does it grant any rights to them. This is precisely why, in any analysis of a creditor's right to reach the assets of a trust, the initial and necessary issue that the court must determine is the extent of the beneficiary's right to access the trust assets, and it is this determination that requires the court to construe the trust document.

Despite this fact, the majority states that the Probate Court did not determine the nature of the plaintiff's right to access the trust assets but only determined the rights of the plaintiff's creditors to reach those assets. If the majority's assertion is correct, however, then there would be no need to analyze the trust language to determine the plaintiff's right to access the trust assets, as the majority does in part II of its opinion.

[9] See footnote 3 of this opinion.

[10] The committee's report provides in relevant part: ''[T]he [testator's] will . . . outlines factors which the trustees are directed to consider before [they] may exercise . . . discretion, including other income and assets available to the [plaintiff]. In its post-hearing brief, [the department] alleges that the trust fails to mention that the trustees are to consider whether [the plaintiff] receives public welfare benefits prior to distributing funds to her or for her benefit from the trust. The compelling inference to be drawn from that argument is that such benefits are not to be considered as income or assets available to the beneficiary which the trust does contemplate. The committee is of the opinion that [the public welfare] benefits were *precisely* why the testator created the trust in the manner set forth in his will. . . . [I]t is difficult to comprehend why [the department] would consider its benefits something apart from income and assets available to a beneficiary, particularly as such benefits are, among others, commonly referred to as *entitlements*.'' (Emphasis added.) The committee then recommended that the Probate Court ''issue a ruling classifying the trust as a special needs trust and that prior to making distributions, the trustees consider *all* other income and assets [including public welfare benefits] available to or for [the plaintiff].'' (Emphasis added.)

[11] As with creditors, state agencies may not reach assets that are otherwise unavailable to the beneficiary. See, e.g., *Bridgeport* v. *Reilly*, 133 Conn. 31, 36–38, 47 A.2d 865 (1946) (government was not entitled to reimbursement from trust assets of spendthrift trust for expenditures on behalf of beneficiary, who resided in state hospital). Moreover, the department does not claim that its rights are any greater than any other creditor of the plaintiff.

[12] The majority cites to 42 U.S.C. § 1396p (d) (4) (A).

[13] See 42 U.S.C. § 1396p (d) (4) (A) (2000).

[14] As the majority acknowledges, the office of the attorney general, acting on behalf of the department, in a letter to the Probate Court asking the court not to construe the terms of the trust, conceded that the department ''already [had] held an administrative hearing on this *exact issue* . . . .''

(Emphasis added.)

[15] I am mindful of the fact that, ''[h]istorically, the doctrine of collateral estoppel, or issue preclusion, required mutuality of the parties. . . . Under the mutuality rule, [p]arties who were not actually adverse to one another in a prior proceeding could not assert collateral estoppel against one another in a subsequent action.'' (Citation omitted; internal quotation marks omitted.) *Torres* v. *Waterbury*, 249 Conn. 110, 135, 733 A.2d 817 (1999), quoting *Labbe* v. *Pension Commission*, 239 Conn. 168, 186, 682 A.2d 490 (1996). This court has recognized, however, that ''[t]he mutuality requirement has . . . been widely abandoned as an ironclad rule. . . . [T]he [mutuality] rule . . . no longer operate[s] automatically to bar use of [the doctrine of] collateral estoppel . . . but . . . circumstances may exist in which lack of mutuality would render application of [the doctrine] unfair.'' (Citations omitted; internal quotation marks omitted.) *Torres* v. *Waterbury*, supra, 135–36, quoting *Labbe* v. *Pension Commission*, supra, 186. Thus, ''[a] party precluded from relitigating an issue with an opposing party . . . is also precluded from doing so with another person unless the fact that he lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue.'' (Internal quotation marks omitted.) *Torres* v. *Waterbury*, supra, 136, quoting 1 Restatement (Second), Judgments § 29, p. 291 (1982). This maxim is not implicated in the present case because the plaintiff and the department were adverse parties in both proceedings.

[16] The majority contends that it cannot ''premis[e] the application of the doctrine of collateral estoppel on a mere inference,'' and that ''the addition of an inferential step is sufficient to negate the required identity of the issues.'' An abstract or unnecessary inference does not flow from the Probate Court's determination, however; instead, a determination of the plaintiff's lack of access to the trust assets is an *inescapable implication* of that determination.

Moreover, the cases on which the majority relies in support of its conclusion, namely, *Nancy G.* v. *Dept. of Children & Families*, 248 Conn. 672, 682, 733 A.2d 136 (1999), and *Crochiere* v. *Board of Education*, 227 Conn. 333, 344–46, 630 A.2d 1027 (1993), do not support its proposition. In both cases, this court determined that the doctrine of collateral estoppel did not preclude the subsequent litigation of an issue because the record did not indicate the specific basis on which the determination of the issue had been made and more than one basis for the determination could have existed. See *Nancy G.* v. *Dept. of Children & Families*, supra, 681–82; *Crochiere* v. *Board of Education*, supra, 344–46. Thus, in *Nancy G.*, we determined that, because the Probate Court's decree was ''susceptible of two conclusions''; *Nancy G.* v. *Dept. of Children & Families*, supra, 681; the doctrine of collateral estoppel did not preclude litigation of the relevant issue in the subsequent proceeding. Id., 682. Likewise, in *Crochiere*, the doctrine of collateral estoppel did not apply because ''[t]he record before this court regarding the 1987 termination hearing reveal[ed] *only that the plaintiff was dismissed*. The dismissal, therefore, may have been for inefficiency or incompetence, insubordination against reasonable rules or disability as shown by competent medical evidence. . . .

* * *

''In the absence of a record to support the defendant's assertions that the hearing officer at the termination proceeding concluded that the plaintiff had inappropriately touched a student and that, as a consequence, he was terminated as a teacher, the [workers' compensation] commissioner was not precluded from inquiring into the allegations of willful misconduct or from deciding that very issue in the context of the workers' compensation hearing.'' (Citation omitted; emphasis added.) *Crochiere* v. *Board of Education*, supra, 227 Conn. 344–46. In the present case, the Probate Court was clear in that it was called upon to determine whether the trust assets were available to the plaintiff, and it determined that those assets were not available to either the state or the plaintiff's creditors and, as a necessary consequence, were not available to the plaintiff as well. Thus, *Nancy G.* and *Crochiere* are inapposite.

[17] This court previously has not determined whether an order of the Probate Court can collaterally estop a subsequent determination by an administrative agency on the same issue. In light of the goals of finality, economy and consistency of judgments embodied by the doctrine of collateral estoppel; e.g., *DaCruz* v. *State Farm Fire & Casualty Co.*, supra, 268 Conn. 686; and the comparable quantum of proof necessary to establish the availability, or unavailability, of the trust assets in both the Probate Court and the

administrative proceedings; see footnote 10 of this opinion and accompanying text; it appears that the doctrine of collateral estoppel properly may apply in the present case. Cf., e.g., *Brower* v. *Killens*, 122 N.C. App. 685, 690, 472 S.E.2d 33 (1996) (when quantum of proof is ''virtually identical'' with respect to court's determination in criminal case and administrative agency's determination in license revocation proceeding, party cannot relitigate issue previously decided by court); *Thompson* v. *Dept. of Licensing*, 138 Wash. 2d 783, 797, 982 P.2d 601 (1999) (when same rules of evidence apply and issue has been fully litigated, evidentiary ruling in criminal case can have preclusive effect in subsequent administrative proceeding). Moreover, the failure to preclude relitigation of the same issue previously determined by a court in a later administrative proceeding undoubtedly would have the effect of undermining the integrity of judicial determinations. See, e.g., *Zapata* v. *Dept. of Motor Vehicles*, 2 Cal. App. 4th 108, 115, 2 Cal. Rptr. 2d 855 (1991) (''[w]hen . . . it is the prior judicial decision that is being ignored in the subsequent administrative hearing, the impact on the integrity of [the] judicial system is . . . direct and magnified'' [internal quotation marks omitted]).