SJC-12922

JOELLEN GUILFOIL, personal representative,[1] vs. SECRETARY OF THE EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES.

Worcester. October 7, 2020. - February 9, 2021.

Present: Budd, C.J., Gaziano, Lowy, Cypher, & Kafker, JJ.

MassHealth. Medicaid. Trust, Nominee trust, Remainder interests. Real Property, Life estate.

Civil action commenced in the Superior Court Department on February 1, 2018.

The case was heard by Jane E. Mulqueen, J., on a motion for judgment on the pleadings.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Lisa M. Neeley for the plaintiff.

Samuel M. Furgang, Assistant Attorney General, for the defendant.

Patricia Keane Martin & C. Alex Hahn, for Massachusetts Chapter of the National Academy of Elder Law Attorneys, amicus curiae, submitted a brief.

[1] Of the estate of Dorothy E. Frank.

CYPHER, J. This case concerns whether the entire interest in a property transferred into a nominee trust is a countable asset in an individual's Medicaid eligibility determination where the individual has retained a life estate in the property. The plaintiff, Dorothy Frank,[2] created a trust, the sole corpus of which consisted of her home. The plaintiff retained a life estate interest in the property as a beneficiary, while her five children had a remainder interest. The office of Medicaid's board of hearings determined that the property was a countable asset that rendered the plaintiff ineligible for long-term care benefits. The plaintiff appealed, and a Superior Court judge ruled in favor of the agency. We conclude that because the trust is a nominee trust, not a true trust, the plaintiff possesses no ability to reclaim ownership of the property's remainder interest and her only interest in the property is a life estate. We further conclude that the plaintiff's life estate is not a countable asset for Medicaid eligibility purposes. Accordingly, we reverse.[3]

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[2] We refer to Dorothy Frank, who initially commenced this lawsuit but died during the pendency of the case, as the plaintiff. Currently, Frank's daughter, JoEllen Guilfoil, is the named plaintiff, as personal representative of Frank's estate. Additionally, Guilfoil now is the trustee of the Frank Family Realty Trust, although it originally was Frank.

[3] We acknowledge the amicus brief submitted by the Massachusetts Chapter of the National Academy of Elder Law Attorneys.

1. Background. We set forth the basic facts and the procedural background of the case, reserving additional details for the discussion section. We begin with an overview of the Medicaid framework to provide context for the discussion.

a. Medicaid framework. Medicaid is a cooperative Federal and State program that "provides medical assistance to low income persons based on financial need." Rudow v. Commissioner of the Div. of Med. Assistance, 429 Mass. 218, 221-222 (1999). See Tarin v. Commissioner of the Div. of Med. Assistance, 424 Mass. 743, 746 (1997). See also 42 U.S.C. § 1396-1. "State participation in this public assistance program is voluntary, and those that choose to participate must submit, for Federal approval, a State Medicaid plan that complies with the Medicaid Act and its implementing regulations." Rudow, supra at 222, citing 42 U.S.C §§ 1396 et seq. The Medicaid program in Massachusetts is known as MassHealth. See G. L. c. 118E, § 9. Recipients of MassHealth must meet certain financial eligibility requirements pursuant to 130 Code Mass. Regs. § 520.001 (2014). See Tarin, supra at 747.

Relevant here is the provision that "[t]he total value of countable assets owned by or available to individuals applying for" MassHealth may not exceed $2,000. 130 Code Mass. Regs. § 520.003(A)(1) (2019). Title 130 Code Mass. Regs. § 520.007 (2019) defines countable assets as "all assets that must be

included in the determination of eligibility. Countable assets include assets to which the applicant or member or his or her spouse would be entitled whether or not these assets are actually received when failure to receive such assets results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf." All real estate owned by the applicant, with the exception of the principal place of residence, is considered a countable asset. 130 Code Mass. Regs. § 520.007(G) (2014).

In order to preserve scarce public resources, "[i]ndividuals are expected to deplete their own resources before obtaining assistance from the government." Lebow v. Commissioner of the Div. of Med. Assistance, 433 Mass. 171, 172 (2001). On many occasions, however, we have been tasked with confronting the "unfortunate reality" that affluent individuals sometimes "devise strategies to appear impoverished in order to qualify for Medicaid benefits." Id. "One such strategy is to transfer assets into an inter vivos trust, whereby funds appear to be out of the individual's control, yet generally are administered by a family member or loved one." Id. Often known as "Medicaid planning," such strategies may dangerously "divert[] scarce Federal and State resources from low-income [qualifying individuals]." Cohen v. Commissioner of the Div. of Med. Assistance, 423 Mass. 399, 404 (1996), cert. denied sub

nom. Kokoska v. Bullen, 519 U.S. 1057 (1997), quoting H.R. Rep. No. 265, 99th Cong., 1st Sess., pt. 1, at 72 (1985). See Daley v. Secretary of the Exec. Office of Health & Human Servs., 477 Mass. 188, 192 (2017).

Congress has attempted to curtail such practices by enacting what is known as the "any circumstances" provision. In the case of an irrevocable trust, for the purpose of demonstrating Medicaid eligibility, the Federal statute provides that "if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual" (emphasis added). 42 U.S.C. § 1396p(d)(3)(B)(i).[4] The relevant MassHealth regulation defines an irrevocable trust as "a trust that cannot be in any way revoked by the grantor," 130 Code Mass. Regs. § 515.001 (2013), and adopts the same "any circumstances test." The regulation provides that "[a]ny portion of the principal or income from the principal (such as interest) of an irrevocable trust that could be paid under any circumstances to or for

[4] Trusts created before 1993 are governed by 42 U.S.C. § 1396a(k) (1986), which Congress repealed and replaced with § 1396p(d) in 1993. See Cohen v. Commissioner of the Div. of Med. Assistance, 423 Mass. 399, 404-406 & n.14 (1996), cert. denied sub nom. Kokoska v. Bullen, 519 U.S. 1057 (1997).

benefit of the individual is a countable asset." 130 Code Mass. Regs. § 520.023(C)(1)(a) (2014).

The Federal statute also provides that, in the case of a revocable trust, "the corpus of the trust shall be considered resources available to the individual." 42 U.S.C. § 1396p(d)(3)(A)(i). The Massachusetts regulation defines a revocable trust as a "trust whose terms allow the grantor to take action to regain any of the property or funds in the trust."[5] 130 Code Mass. Regs. § 515.001. Much like the Federal statute, the State regulation provides that "[t]he entire principal in a revocable trust is a countable asset." 130 Code Mass. Regs. § 520.023(B)(1) (2013).[6]

One further constraint that Congress established to protect against Medicaid planning is the so-called "look-back" rule.

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[5] Under current Massachusetts law, "[u]nless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust." G. L. c. 203E, § 602. This provision only applies to trust instruments executed after July 8, 2012, and thus is not applicable here, where the trust was created in 1999.

[6] The regulation further specifies that "[t]he home or former home of a nursing-facility resident or spouse held in an irrevocable trust that is available according to the terms of the trust is a countable asset" that is not subject to the exemptions of 130 Code Mass. Regs. § 520.007(G)(2) or (G)(8). 130 Code Mass. Regs. § 520.023(C)(1)(d) (2014). Similarly, "[t]he home or former home of a nursing-facility resident or spouse held in a revocable trust is a countable asset" that is not subject to the exemptions. 130 Code Mass. Regs. § 520.023(B)(4) (2014).

Under 42 U.S.C. § 1396p(c)(1)(B)(i), the look-back rule "imposes a penalty for any asset transfer for less than fair market value made by an individual within five years of the individual's application for Medicaid benefits." Daley, 477 Mass. at 193. If such a transfer occurs during the five years (the look-back period), the applicant is ineligible for Medicaid benefits for a period of time determined by dividing the value of the transfer by the average monthly cost of the nursing home facility. See 42 U.S.C. § 1396p(c)(1)(E). After the look-back period has expired, the individual is not subject to any penalty.

b. The trust. On December 16, 1999, the plaintiff established the Frank Family Realty Trust (trust). The plaintiff transferred her home in Fitchburg to the trust, which was "intended to be a nominee trust." Under the terms of the trust, the plaintiff was the trustee, as well as one of six beneficiaries of the trust. The schedule of beneficiaries, a separate document established under the agreement and declaration of trust on June 25, 2001, lists each beneficiary's interest in the property. The plaintiff had a life estate interest in the property under the trust, and the other five beneficiaries, her children, have a remainder interest as joint tenants with rights of survivorship. The trust contains nine articles. Of particular significance here are the articles titled "Trustees," "Beneficiaries," Powers of Trustees,"

"Termination," and "Amendments." According to the agreement and declaration of trust, the trust can be amended in a writing signed by all beneficiaries. The trust can be terminated at any time by notice in writing from any of the beneficiaries. If terminated, the trust's assets will be transferred and conveyed to the beneficiaries as tenants in common in proportion to their respective interests or as otherwise directed by all of the beneficiaries. The trustee, except in a case of termination, has "no power to deal in or with the Trust Estate except as directed by all of the Beneficiaries."

At the time this suit was initiated, the plaintiff was a ninety-one year old woman who had been living in a long-term nursing facility since March 2017. Shortly after she moved to the facility, she applied for long-term benefits from MassHealth. Her application was denied because MassHealth determined that her countable assets exceeded the $2,000 limit. In its determination of her countable assets, MassHealth included a small amount of funds the plaintiff had in a credit union account and her real property, worth $109,000, that had been transferred to the trust. The credit union account contained less than $2,000; therefore, the only issue in dispute is whether the real property was a countable asset that rendered the plaintiff ineligible for long-term benefits. The plaintiff appealed, and after a hearing, the hearing officer upheld

MassHealth's denial of her application. A Superior Court judge denied the plaintiff's motion for judgment on the pleadings and affirmed the decision of the hearing officer. The plaintiff appealed, and we transferred the case to this court on our own motion.

2. Standard of review. In reviewing administrative agency decisions, we give "due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it." G. L. c. 30A, § 14 (7). "The burden of proof is on the appealing party to show that the order appealed from is invalid, and we have observed that this burden is heavy." Massachusetts Inst. of Tech. v. Department of Pub. Utils., 425 Mass. 856, 867 (1997). Where an agency's finding is supported by substantial evidence, we do not disturb it. See Springfield v. Department of Telecomm. & Cable, 457 Mass. 562, 568 (2010). "Where an agency's determination involves a question of law, however, it is subject to de novo review." Id. At issue here -- whether the entire interest in a property transferred to a nominee trust is a countable asset in a MassHealth eligibility determination where the trustee retains a life estate in the real property -- is a question of law. Accordingly, we review the matter de novo.

3. Discussion. a. Nominee trust. We first address the plaintiff's contention that the trust is a nominee trust, which establishes only a principal and agency relationship between the beneficiaries and trustees. It is well established that a nominee trust is "an entity created for the purpose of holding legal title to property with the trustees having only perfunctory duties" (citation omitted). Morrison v. Lennett, 415 Mass. 857, 860 (1993). A true trust, on the other hand, is defined as "a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person." Restatement (Second) of Trusts § 2 (1959). The trustee of a true trust has a duty to the beneficiary to administer the trust and can exercise such powers as are necessary or appropriate to carry out the purposes of the trust and that are not forbidden by the terms of the trust. Id. at §§ 169, 186.

The common characteristics of a nominee trust are as follows: "(1) the names of the beneficiaries are filed with the trustees rather than being publicly disclosed; (2) a trustee may serve simultaneously as a beneficiary; (3) the trustees lack power to deal with the trust property except as directed by the beneficiaries; (4) a third party may rely on the disposition of trust property pursuant to any instrument signed by the

trustees, without having to inquire as to whether the terms of the trust have been complied with; and (5) the beneficiaries may terminate the trust at any time, thereby receiving legal title to the trust property as tenants in common in proportion to their beneficial interests." Roberts v. Roberts, 419 Mass. 685, 687 n.2 (1995), quoting In Re Grand Jury Subpoena, 973 F.2d 45, 48 (1st Cir. 1992). It is the third feature, in which the trustees have no power to act in respect to the trust property but may only act at the direction of the beneficiaries, that is key to the nature of the nominee trust. "Unlike in a 'true trust,' the trustees of a nominee trust have no power, as such, to act in respect of the trust property, but may only act at the direction of . . . the beneficiaries." Morrison, 415 Mass. at 860, quoting Birnbaum, The Nominee Trust in Massachusetts Real Estate Practice, 60 Mass. L.Q. 364, 365 (1976). See Lattuca v. Robsham, 442 Mass. 205, 207 n.6 (2004).

We agree with the plaintiff that the trust at issue is a nominee trust and is, in many ways, akin to a title-holding entity, rather than a true trust. The trust document states that it "is intended to be a nominee trust, so-called, for federal and state income tax purposes and to hold the record legal title to the Trust Estate and perform such functions as are necessarily incidental thereto." As is characteristic of a

nominee trust, the trust permits a trustee to serve simultaneously as a beneficiary.

Most significantly, the trust provides that the trustees are to act only at the discretion of the beneficiaries. See Morrison, 415 Mass. at 860-861 (where declaration establishing trust provides that trustees are to act solely at direction of beneficiary, trust is nominee trust); Bellemare v. Clermont, 69 Mass. App. Ct. 566, 571 (2007) ("Where a person is both agent and trustee for another, the agency relation . . . predominates" [quotation and citation omitted]). By contrast, in a true trust, the trustee is tasked with the duty to administer the trust "in accordance with its terms and purposes and the interests of the beneficiaries." G. L. c. 203E, § 801. Here, article IV of the trust, "Powers of Trustees," states that "the Trustees shall have no power to deal in or with the Trust Estate except as directed by all of the Beneficiaries." As is the case in nominee trusts, the trustees' lack of discretion to act altogether establishes a principal and agency relationship between beneficiaries and trustees. Compare In re VanBuskirk, 511 B.R. 220, 231 (Bankr. D. Mass. 2014) ("That the Realty Trust property happens to be real property does not make the express trust a nominee trust when the trustees and not the beneficiaries retain control over the property"); Lyons v. Federal Sav. Bank, 193 B.R. 637, 645 (Bankr. D. Mass. 1996)

(trust was not nominee trust where trustees' authority to determine distributees, declare dividends, and distribute uninvested capital rendered trustees more than agents of beneficiaries). The beneficiaries of a nominee trust become the vested owners of the property in question, and accordingly, the grantor has no power to revoke the trust. Compare Old Colony Trust Co. v. Clemons, 332 Mass. 535, 539 (1955) (where settlor retains right to revoke, he or she intends that beneficiary's interest not vest until his or her death).

Additionally, here, the beneficiaries may terminate the trust. The trust provides: "This Trust may be terminated at any time by notice in writing from any of the Beneficiaries . . . ." In a typical nominee trust, each beneficiary has the power to terminate the trust at any time. See Roberts, 419 Mass. at 687 n.2. This is because a vested owner must have the right to dispose freely of that property. Here, the beneficiaries have an interest as joint tenants with the right of survivorship so long as the trust exists. The beneficiaries may terminate the trust at any time, thereby receiving legal title to the trust property as tenants in common in proportion to their beneficial interests. When one beneficiary terminates, the beneficiaries are left with separate interests as tenants in common and are free to alienate their respective interests. The

termination clause, as the plaintiff suggests, is further evidence that the trust is not a true trust.

Similarly, only the beneficiaries are permitted to amend the trust. Article III of the trust, titled "Beneficiaries," provides: "Decisions made and actions taken hereunder (including without limitation, amendment of this Trust; appointment and removal of Trustees, directions and notices to Trustees; and execution of documents, shall be made or taken as the case may be, by any of the Beneficiaries." Article VI of the trust, "Amendments," provides: "This Declaration of Trust may be amended from time to time by an instrument in writing signed by all of the Beneficiaries . . . ." We do not read these two sections as conflicting; rather, it appears to us that the amendment terms under the "beneficiaries" section refer to any beneficiary's ability to amend the trust, including amendment of the schedule of beneficiaries.[7] The "amendments" section imposes a further restriction on the beneficiaries' ability to amend the agreement and declaration of trust. Amendment of the agreement and declaration of trust is permitted only through a writing signed by all beneficiaries.

[7] The trust is not a model of clarity. We read the instrument as a whole and interpret its terms with reference to the trust's purpose as a whole. Cf. Ferri v. Powell-Ferri, 476 Mass. 651, 654 (2017).

The inclusion of the schedule of beneficiaries in the amendment terms of the "beneficiaries" section is evident first from the language "amendment of this Trust," rather than amendment of "the Declaration of Trust," as specified in the "amendments" section. Additionally, the first clause of the "beneficiaries" section primarily relates to the function of the schedule of beneficiaries. It states, in relevant part: "The term 'Beneficiaries' shall mean the persons and entities listed as Beneficiaries in the Schedule of Beneficiaries and in . . . revised Schedules of Beneficiaries . . . ." It follows that the second clause of the "beneficiaries" section, which provides for the "amendment of this Trust . . . by any of the Beneficiaries," also includes the beneficiaries' ability to amend the schedule of beneficiaries.

b. Nominee trust analysis. We now turn to the question whether this nominee trust is analyzed under traditional trust law. The plaintiff argues that the hearing officer and the trial judge applied the incorrect legal principles because the trust is not a true trust. MassHealth counters that countability for Medicaid eligibility purposes is based on whether the grantor can access trust proceeds, regardless of the nature of the trust. MassHealth contends that there are circumstances in which the grantor could access the trust proceeds and, accordingly, regardless of whether the trust is a

"true trust," it is governed by the Federal statute as well as the Massachusetts regulation. Title 130 Code Mass. Regs. § 520.023 applies to "trusts or similar legal devices created on or after August 11, 1993, that are created or funded other than by a will." See 42 U.S.C. § 1396p(d)(6) ("The term 'trust' includes any legal instrument or device that is similar to a trust . . .").

We conclude that the nominee trust in this case is not a "similar legal device" to a trust.[8] 130 Code Mass. Regs. § 520.023. Here, the features of the trust are in line with the purposes for which nominee trusts are typically used. See

[8] This is not to say, however, that there may not be circumstances in which a so-called "nominee trust" might hold more characteristics of a trust than an agency. See Roberts v. Roberts, 419 Mass. 685, 688 (1995). In such a case, the nominee trust could be considered a trust-like device and would be subject to trust law for the purposes of determining Medicaid eligibility. Id. ("The fact that a nominee trust is held to be an agency in some contexts, however, does not mean that it should be treated as an agency in every instance. Trusts have been recognized for some purposes even though they are ignored for others"). In Roberts, the court concluded that because "gifts over" are not typical of nominee trusts, which normally do not provide for the disposition of the res to anyone other than the beneficiaries, agency principles were not applicable. Id. at 689. A "gift over" is a provision within an inter vivos trust that requires the transfer of the trust estate on the settlor's death. See id. at 689-690. There, the trustees were to transfer the trust estate to the trustees as tenants in common, giving no additional control to the beneficiaries. Id. at 686, 689. "Gifts over" are unrelated to the purposes for which nominee trusts are used -- maintaining anonymity of ownership, easing transferability and avoiding title transfers. Id. at 689. See Birnbaum, The Nominee Trust in Massachusetts Real Estate Practice, 60 Mass. L.Q. 364, 365-366 (1976).

Roberts, 419 Mass. at 689 (nominee trust typically used for maintaining anonymity of ownership, easing transferability, and avoiding title transfers). As discussed supra, there is no trustee-beneficiary relationship created by the trust; rather, the trust establishes a principal-agent relationship where beneficiaries control the trustee's actions and have unfettered power to terminate or amend the trust.

Accordingly, because the trust is not a true trust, it does not bear any similarities to a revocable trust or an irrevocable trust. Upon the transfer of the plaintiff's property to the trust, an immediate property interest vested in the beneficiaries. See Bromley v. Mitchell, 155 Mass. 509, 512 (1892). The plaintiff retained no rights of ownership. See Goodwill Enters., Inc. v. Kavanaugh, 95 Mass. App. Ct. 856, 859 (2019) ("there is logic in treating the beneficiaries of a nominee trust as the true owners of the property for the purposes of liability as well as benefit" [quotation and citation omitted]); Bellemare, 69 Mass. App. Ct. at 571 (in prior decisions involving nominee trusts, "[l]iability has been imposed directly on the beneficiaries" [citation omitted]). Unlike a true trust, the property here vested at the time it was conveyed. Compare McClintock v. Scahill, 403 Mass. 397, 399 (1988) (trustee holds "full legal title to all property of a trust and the rights of possession that go along with it");

Welch v. Boston, 221 Mass. 155, 157 (1915) ("It is one of the fundamental characteristics of trusts that the full and exclusive legal title is vested in the trustee").

We agree with the plaintiff that a nominee trust is not subject to traditional trust law, and therefore our analysis does not begin, as it would with a true trust, with whether the trust is revocable or irrevocable. Accordingly, MassHealth's contention that the trust is revocable under 42 U.S.C. § 1396p(d)(3)(A)(i) and 130 Code Mass. Regs. § 520.023(B)(1) is misguided. Regardless, we highlight that, much like an irrevocable trust, the trust here does not permit any circumstances that would allow for distribution of the principal to the plaintiff. We examine the provisions of the trust that bear on this question.

MassHealth argues that the trust was revocable because any of the beneficiaries could terminate the trust and, upon termination, the plaintiff's equitable life estate would be converted to a legal life estate. There is no provision in the trust, however, that gives the plaintiff the unilateral right to revoke the trust and regain full title ownership. Although any beneficiary may terminate the trust, article V, "Termination," states that all assets must be distributed to the beneficiaries upon termination. In this circumstance, each beneficiary retains control of his or her own interest. The other

beneficiaries' vested interests cannot be reclaimed by the plaintiff, who originally deeded the property into the nominee trust. The plaintiff would be left with a life estate and the other five beneficiaries would receive a remainder interest as set out in the schedule of beneficiaries. The plaintiff has no discretionary authority and no power to return the property to herself.

We further conclude that the plaintiff has no ability to revoke the trust and receive a distribution of the remainder interest. The schedule identifying the named beneficiaries lists the plaintiff's children, the other five beneficiaries, as having a remainder interest in the property as joint tenants. The plaintiff is not the owner of any portion of the remainder interest in the property. As the plaintiff contends, her initial transfer of the remainder interest in the property to her children is the equivalent of an irrevocable gift. Under MassHealth regulations, such a transfer is a noncountable resource in an applicant's benefit eligibility determination after the lapse of a five-year disqualification period. See 130 Code Mass. Regs. § 520.023(A)(1). The look-back provision was triggered when the plaintiff transferred the property to her children in 2001, and the disqualification period expired in 2006.

The plaintiff did not apply for long-term benefits until 2017. Accordingly, such a gift would fall outside the five-year look-back period and therefore would not be countable for MassHealth purposes. In the case of termination, the only way that the plaintiff could gain control of the property would be if the other beneficiaries gifted her their remainder interests. This "gifting" would constitute an action outside the termination and is not a scenario contemplated within the four corners of the trust document. "Medicaid does not consider assets held by other family members who might, by reason of love but without legal obligation, voluntarily contribute monies toward the grantor's support." Heyn v. Director of the Office of Medicaid, 89 Mass. App. Ct. 312, 318-319 (2016).

Finally, MassHealth argues that under article III of the trust, the "beneficiaries" section, the plaintiff could amend the schedule of beneficiaries to name herself sole trustee and sole beneficiary, thus regaining the entire property free of the trust. MassHealth contends that the trust also posits this exact scenario in the "beneficiaries" section: "The parties hereunder recognize that if a sole Trustee and a sole Beneficiary are one and the same person, legal and equitable title hereunder shall merge as a matter of law." MassHealth further relies on Langley v. Conlan, 212 Mass. 135, 138 (1912), for the principle that "where the legal and equitable title of

real estate both vest in the same person, the equitable title will merge in the legal estate, and absolute ownership will ensue divested of the trust." This argument, however, ignores one of the defining characteristics of the nominee trust: the beneficiaries are the vested owners of the property in question.

While the beneficiaries' remainder interests may not be vested in possession while the plaintiff retained a life estate, they were vested in interest at the time the property was conveyed to the trust. See Hochberg v. Procter, 441 Mass. 403, 414-415 (2004), citing L.M. Simes & A.F. Smith, Future Interests § 142, at 128-130 (2d ed. 1956) ("If the remainder is for life, the remainderman will enjoy the possession only if he survives the termination of the preceding life estate. Nevertheless the death of the remainderman is not regarded as a condition, but as a limitation of the remainderman's estate. Hence, there being no words of condition, the remainder for life . . . in an ascertained person is vested"). The plaintiff's ability to amend the schedule of beneficiaries cannot extinguish the beneficiaries' vested interests. Furthermore, such an amendment of the schedule of beneficiaries would circumvent the purpose of the nominee trust as a holding device for legal title to the trust property.

c. The value of a life estate. Having concluded that the plaintiff has retained no ability to reclaim the corpus of the

trust, we now turn to whether the retention of a life estate in a primary residence could render an individual ineligible for Medicaid benefits. We have not found, and the parties have not provided, any Massachusetts case law directly addressing this question. See Daley, 477 Mass. at 204 ("Although we do not decide the question, it appears that MassHealth does not consider a life estate in an applicant's primary residence to be a countable asset for Medicaid eligibility purposes"); Heyn, 89 Mass. App. Ct. at 313 n.3 (recognizing that MassHealth stated in its brief that retention of life estate does not render individual ineligible for benefits, but declining to consider question).

Other jurisdictions, have excluded the value of an applicant's life estate in a property that serves as the individual's principal place of residence when calculating assets to determine Medicaid eligibility. See Groce v. Director, Ark. Dep't of Human Servs., 82 Ark. App. 447, 453-454 (2003) (life estate excluded for purposes of Medicaid eligibility if applicant's principal place of residence); Kaspari v. Olson, 2011 ND 124, ¶¶ 9-10 (value of applicant's life estate excluded as actually available asset for purposes of establishing initial Medicaid eligibility but income from life estate considered to determine extent of assistance); Bleick v. North Dakota Dep't of Human Servs., 2015 ND 63, ¶ 33 (Crothers,

J., dissenting) ("Life estate interests in real property are excluded when calculating an applicant's available assets").

In Daley, this court contemplated the meaning of 130 Code Mass. Regs. § 520.023(C)(1)(d), which provides: "The home or former home of a nursing-facility resident or spouse held in an irrevocable trust that is available according to the terms of the trust is a countable asset." See Daley, 477 Mass. at 198-199. We concluded that the grantors' right of use in their homes and occupancy of the homes did not make the homes "available" to them. Id. at 202. There, the analysis turned on whether the terms of the trusts granted the trustees the discretion in any circumstance to sell the grantors' homes and distribute the proceeds. Id.

We apply the same analysis to the retention of the life estate in this case. "A joint tenant, tenant by the entirety, or tenant in common holds a direct ownership interest in the property in question. That is not true of the holder of a life estate interest or, as a general matter, one holding a beneficial interest." Boyle v. Weiss, 461 Mass. 519, 525 n.14 (2012). Here, the plaintiff cannot amend the terms to alter the beneficial interest. Because a life estate does not permit an individual to sell the home and distribute the proceeds, we conclude that the retention by an applicant of a life estate in his or her primary residence does render the property a

countable asset. Accordingly, it was error to include the value of the property as an asset in the plaintiff's Medicaid eligibility determination.

4. Conclusion. We reverse the judgment and remand to MassHealth for further proceedings consistent with this opinion.

So ordered.