SJC-13059

PATRICIA A. FOURNIER, personal representative,[1] vs. SECRETARY OF THE EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES.

Worcester. April 7, 2021. - July 23, 2021.

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

Medicaid. MassHealth. Trust, Irrevocable trust, Power of appointment. Fiduciary.

Civil action commenced in the Superior Court Department on September 5, 2018.

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

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

Julie E. Green, Assistant Attorney General, for the defendant.

Lisa M. Neeley for the plaintiff.

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

Martin W. Healy, Thomas J. Carey, Jr., Ryan P. McManus, & Paul M. Cathcart, for Massachusetts Bar Association, amicus curiae, submitted a brief.

[1] Of the estate of Emily Misiaszek.

GEORGES, J. Four years ago, in Daley v. Secretary of the Exec. Office of Health & Human Servs., 477 Mass. 188, 203 (2017), we raised -- but did not answer -- the question whether a trust settlor's reservation of a limited power of appointment to appoint trust principal to a nonprofit or charitable entity over which the settlor has no control, contained within an irrevocable trust established by the settlor, could render the assets held in the trust "countable" for purposes of determining the settlor-applicant's eligibility for Medicaid long-term care benefits. Specifically, we instructed MassHealth[2] to consider, in the first instance, whether there were "any circumstances," see 42 U.S.C. § 1396p(d)(3)(B)(i), in which the settlor-applicant could use his limited power of appointment to appoint

[2] MassHealth is the State-administered Medicaid program in Massachusetts, and it was established "pursuant to and in conformity with the provisions of" the Federal Medicaid Act (act). G. L. c. 118E, § 9. If a person meets the Federal financial eligibility requirements for Medicaid under the act, then MassHealth may not deny the person long-term care benefits. See G. L. c. 118E, § 9 ("provided that such persons meet the financial eligibility requirements of [the act], . . . long-term care services shall be available to otherwise eligible persons whose income and resources are insufficient to meet the costs of their medical care as determined by the financial eligibility requirements of the program"). "In order to qualify for Medicaid in Massachusetts, MassHealth requires that '[t]he total value of countable assets owned by or available to' an individual applicant not exceed $2,000." Daley, 477 Mass. at 191-192, quoting 130 Code Mass. Regs. § 520.003(A)(1) (2014).

the trust principal to a nonprofit or charitable nursing home for the purpose of paying for his care. Daley, supra.

This case picks up where Daley left off. While both were living, the plaintiff, Emily Misiaszek,[3] and her husband created an irrevocable trust, the corpus of which includes their home. The terms of the trust grant Misiaszek, during her lifetime, a limited power of appointment to appoint all or any portion of the trust principal to a nonprofit or charitable organization over which she has no controlling interest. After Misiaszek applied for and was denied MassHealth long-term care benefits, the Massachusetts Office of Medicaid's board of hearings (board) affirmed MassHealth's determination that the home was a countable asset, concluding that Misiaszek ostensibly could use her limited power of appointment to appoint portions of the home's equity, included as part of the trust principal, to the nonprofit nursing home where she resided as payment for her care. Misiaszek then sought judicial review of the board's decision, and a Superior Court judge reversed the board's ineligibility determination.

---

[3] Although the trust was self-settled by both Misiaszek and her husband, the husband predeceased her well before she applied for MassHealth benefits and before this litigation commenced. Accordingly, we refer to Misiaszek, who initially commenced this action but died during the pendency of this case, as the plaintiff and sole self-settlor of the trust. Currently, Misiaszek's daughter, Patricia Fournier, is the named plaintiff as personal representative of Misiaszek's estate.

We conclude that under the terms of her trust, Misiaszek's limited power of appointment does not allow her, in any circumstance, to appoint the trust principal for her benefit, and thus the trust principal is not "countable" for purposes of determining her eligibility for MassHealth benefits. Accordingly, we affirm the judgment of the Superior Court and remand the case for further proceedings consistent with this opinion.[4]

Background. We first provide an overview of the Medicaid framework and our decision in Daley, both of which provide important context for our analysis. We then summarize the relevant facts and procedural posture of this case.

1. Medicaid framework. "Medicaid is a cooperative Federal and State program that 'provides medical assistance to low income persons based on financial need.'" Guilfoil v. Secretary of the Exec. Office of Health & Human Servs., 486 Mass. 788, 789 (2021), quoting Rudow v. Commissioner of the Div. of Med. Assistance, 429 Mass. 218, 221-222 (1999). As we have noted previously, the Medicaid eligibility requirements "often [require] applicants to 'spend down' or otherwise deplete their resources to qualify for Medicaid long-term care benefits when

[4] We acknowledge the amicus briefs submitted by the Massachusetts Chapter of the National Academy of Elder Law Attorneys and the Massachusetts Bar Association.

they enter a nursing home." Daley, 477 Mass. at 192. Through the practice known as "Medicaid planning," however, individuals with "significant resources devise strategies to appear impoverished in order to qualify for Medicaid benefits." Lebow v. Commissioner of the Div. of Med. Assistance, 433 Mass. 171, 172 (2001). "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.

To limit the practice of Medicaid planning and to preserve scarce public resources, Congress in 1993 amended the act to include what is known as the "any circumstances" test, which applies when determining an applicant's eligibility for Medicaid benefits. See Cohen v. Commissioner of the Div. of Med. Assistance, 423 Mass. 399, 405-406 (1996), cert. denied sub nom. Kokoska v. Bullen, 519 U.S. 1057 (1997). With respect to an irrevocable trust, the act 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." 42 U.S.C.

§ 1396p(d)(3)(B)(i).[5] MassHealth has promulgated a regulation that implements the "any circumstances" test. See 130 Code Mass. Regs. § 520.023(C)(1)(a) (2014) ("Any portion of the principal or income from the principal . . . of an irrevocable trust that could be paid under any circumstances to or for the benefit of the individual is a countable asset"); 130 Code Mass. Regs. § 520.023(C)(1)(d) (2014) ("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").

In essence, "[t]he effect of the ['any circumstances'] test is that if the trustee is afforded even a 'peppercorn of discretion' to make payment of principal to the applicant, or if the trust allows such payment based on certain conditions, then the entire amount that the applicant could receive under 'any state of affairs' is the amount counted for Medicaid eligibility." Daley, 477 Mass. at 193, citing Cohen, 423 Mass. at 413. Importantly, though, we have stressed that "the principle of actual availability . . . has served primarily to prevent the States from conjuring fictional sources of income

---

[5] "The relevant MassHealth regulation defines an irrevocable trust as 'a trust that cannot be in any way revoked by the grantor,' . . . and adopts the same 'any circumstances test.'" Guilfoil, 486 Mass. at 791, quoting 130 Code Mass. Regs. § 515.001 (2013). The parties do not dispute that the Misiaszek trust is an irrevocable trust.

and resources by imputing financial support from persons who have no obligation to furnish it or by overvaluing assets in a manner that attributes nonexistent resources to recipients." Daley, supra at 202, quoting Heckler v. Turner, 470 U.S. 184, 200 (1985). See Heyn v. Director of the Office of Medicaid, 89 Mass. App. Ct. 312, 314 (2016) ("The resulting law reflects a compromise, with . . . strict requirements governing the extent to which assets must be made unavailable to the settlor in order to avoid being treated as 'countable assets' for purposes of Medicaid eligibility. Nonetheless, it is settled that, properly structured, [irrevocable] trusts may be used to place assets beyond the settlor's reach and without adverse effect on the settlor's Medicaid eligibility").

In short, for trust principal to be considered countable under the "any circumstances" test, the terms of the trust must give the applicant a direct path to reach or benefit from the trust principal.[6]

---

[6] We also have emphasized that "if the amounts that may be paid to the Medicaid applicant come only from the income of the trust, those income payments do not render the principal of the trust available as an asset; rather, they are treated as income that may affect the amount of Medicaid benefits to be received but not the applicant's eligibility for such benefits" (emphases in original). Daley, 477 Mass. at 194, citing Guerriero v. Commissioner of the Div. of Med. Assistance, 433 Mass. 628, 632 n.6 (2001). Thus, while article 2.1 of the irrevocable trust at issue here empowers the trustee to pay Misiaszek income from the trust as the trustee deems appropriate, these amounts, actual or potential, do not factor into our analysis.

2. Daley. In Daley, 477 Mass. at 189, we considered the MassHealth eligibility of two individuals who had established irrevocable trusts. As relevant here, one of those plaintiffs, Lionel Nadeau, together with his wife, deeded their home to an irrevocable trust (Nadeau trust) in return for nominal consideration and named their daughter as sole trustee. Id. at 196-197. Save for two exceptions, the terms of the Nadeau trust required the trustee to hold the principal until the termination of the trust, which was to occur either upon Nadeau's death or when the trustee, in her sole discretion, determined that the trust should be terminated. Id. at 197. One of the exceptions granted Nadeau a limited power of appointment, which permitted him, as the settlor of the trust, to appoint the trust principal to a nonprofit or charitable organization over which he had no controlling interest. Id. The terms of the Nadeau trust also granted Nadeau "the right to use and occupy any residence that may from time to time be held" by the trust. Id.

The question before us in Daley was whether Nadeau's retention of the right to reside in and enjoy the use of the home held in trust rendered the home a "countable" asset under the act's and MassHealth's "any circumstances" test, such that MassHealth could consider the full value of the trust principal in determining Nadeau's eligibility for MassHealth benefits. Id. at 189. We answered the question in the negative,

concluding that the right of a settlor of an irrevocable trust to reside in a home held in trust as one of the trust assets is equivalent to a distribution of income of the trust, and not the principal, because the trustee had neither the obligation nor the power to sell the home and furnish the proceeds to Nadeau in any circumstance. Id. at 202-203. Thus, MassHealth's decision to count the home's equity as part of its eligibility determination for Nadeau amounted to "'conjuring [a] fictional' resource (the applicant's home) by 'imputing financial support' from a person who has no authority to furnish it (the trustee)." Id., quoting Heckler, 470 U.S. at 200.

In our remand instructions to MassHealth, we suggested it was "appropriate for MassHealth to consider," in the first instance, whether it was possible for Nadeau to use his limited power of appointment to use the trust assets to pay a nonprofit organization for his care, and whether such a possibility fits within the "any circumstances" test.[7] Id. at 203. Notably, after the case was remanded to MassHealth, the board ultimately concluded that Nadeau's limited power of appointment did not render the home a countable asset for MassHealth eligibility

[7] Unlike with Misiaszek, the skilled nursing home that Nadeau resided at was not operated by a nonprofit or charitable organization. See Daley, 477 Mass. at 203. Accordingly, we remanded the case to MassHealth so it could consider what was then a hypothetical circumstance.

purposes because the terms of the trust instrument did not permit him to exercise the limited power for his benefit. See Office of Medicaid Bd. of Hearings App. No. 1408634, at 13 (Mar. 5, 2018). MassHealth did not appeal from the board's decision in Nadeau's case.

3. Misiaszek trust. The trust at issue here is nearly identical to the Nadeau trust we considered in Daley. In December 2002, Misiaszek and her husband, both of whom now are deceased, established an irrevocable trust (Misiaszek trust). They appointed their daughter, Patricia Fournier, as trustee.[8] On the same date as the trust was created, Misiaszek and her husband deeded their home and primary residence to the trust for no consideration. From the time the trust was formed until the day she entered a skilled nursing facility, Misiaszek lived in the home, as permitted by the terms of the trust.

The parties' dispute centers on a handful of the trust's provisions. Article 1.2 provides that the purpose of the trust is "to manage [Misiaszek's] assets and to use them to allow [Misiaszek] to live in the community as long as possible." Article 2.1 provides that Misiaszek is entitled to payments of trust income from the trustee, which are to be made solely in the trustee's discretion. The trust instrument defines "income"

[8] Fournier was and continues to be the sole trustee of the Misiaszek trust.

as "net income and accumulated income not added to principal, and does not include capital gain." Article 2.1 further provides that "[e]xcept as provided in paragraph 2.2 below, the principal shall be held until the termination of this trust."

Importantly, article 2.2 grants Misiaszek a limited power of appointment over the trust principal. Specifically, the provision states that, during her lifetime, Misiaszek

> shall have the power to appoint from time to time, by an instrument in writing by [herself] or by [her] legal representative, all or any part of the trust property then on hand to any one or more charitable or non-profit organizations over which [she has] no controlling interest, whether or not organized for a purpose specified in section 170(c) of the Internal Revenue Code of 1986, but excluding any [F]ederal, [S]tate, or local government or any sub-division, department, or agency thereof."[9]

In addition, article 3.1 provides that the trust shall terminate upon either Misiaszek's death or a determination by the trustee, in her sole discretion, that the trust should be terminated. In either case, article 3.2 directs the trustee to "[p]ay the remaining principal and undistributed income in equal shares to [Misiaszek's] children with their issue to take by right of representation." Finally, article 4.9 provides that "[a]ll powers and discretion given to [Misiaszek's] trustee are

[9] As we discuss infra, neither party disputes that article 2.2 grants Misiaszek a "limited" (as opposed to a "general") power of appointment.

exercisable only in a fiduciary capacity, in accordance with reasonable discretion."

4. Procedural history. In May 2017, following her admission to a skilled nursing facility, Misiaszek applied for and was denied MassHealth benefits.[10] MassHealth determined that Misiaszek was ineligible because the equity of the home held in the trust exceeded MassHealth's $2,000 eligibility ceiling by over $160,000. Misiaszek appealed to the board, which affirmed MassHealth's denial of her application. The board subsequently agreed with MassHealth's conclusion that article 2.2 rendered the trust corpus countable, because it seemingly permitted Misiaszek to appoint the trust principal to a nonprofit nursing facility to pay for her long-term care.

Misiaszek then sought review of the board's decision in the Superior Court pursuant to G. L. c. 30A, § 14, and moved for judgment on the pleadings, which the judge subsequently allowed. The judge determined that the board's reliance on Daley was misplaced because Daley did not purport to address the contours or scope of Nadeau's limited power of appointment, but instead only instructed MassHealth to consider the issue in the first instance. The judge also noted that, in Nadeau's particular

[10] Misiaszek's husband predeceased her. While the record is unclear as to when the husband died, the board hearing officer found that he died prior to when Misiaszek moved to a skilled nursing facility and applied for MassHealth benefits.

case, the board on remand ultimately reversed MassHealth's denial of Nadeau's application, finding there was "no evidence that if [Nadeau] were to move to a non-profit organization that the non-profit nursing facility would be allowed to or required to use the trust principal for the appellant's benefit or care." Because there is "no substantive difference between [a]rticle 2.2 of [the Misiaszek] trust and the article considered in [Daley]," the judge concluded that the hypothetical transfer contemplated by the board and MassHealth would be ineffective as a matter of law, and thus "does not constitute circumstances under which payment from the trust could be made to or for the benefit of [Misiaszek]."

MassHealth timely appealed from the judge's order granting Misiaszek judgment on the pleadings to the Appeals Court. We then transferred the case on our own motion.

Discussion. 1. 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.'" Springfield v. Department of Telecomm. & Cable, 457 Mass. 562, 567 (2010), quoting G. L. c. 30A, § 14 (7). "We exercise de novo review of legal questions, however, and we must overturn agency decisions that are not consistent with governing law." Bulger v. Contributory Retirement Appeal Bd., 447 Mass.

651, 657 (2006), citing Plymouth v. Civil Serv. Comm'n, 426 Mass. 1, 5 (1997). The specific issue in this case -- whether Misiaszek's limited power of appointment renders the value of the trust corpus a countable asset for purposes of determining her MassHealth eligibility -- is a question of law, and thus is subject to de novo review. See Guilfoil, 486 Mass. at 793 ("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").

In addition, "[t]he interpretation of a written trust is a matter of law to be resolved by the court." Ferri v. Powell-Ferri, 476 Mass. 651, 654 (2017). "The rules of construction of a contract apply similarly to trusts; where the language of a trust is clear, we look only to that plain language." Id. It is "a 'fundamental principle of Massachusetts law' that trust instruments be construed to 'ascertain the intention of the testator from the whole instrument, attributing due weight to all its language . . . and to give effect to that intent unless some positive rule of law forbids.'" Pierce v. Doyle, 442 Mass. 1039, 1040 (2004), quoting Dana v. Gring, 374 Mass. 109, 117 (1977).

2. Limited power of appointment. MassHealth argues that the plain language of article 2.2 of the Misiaszek trust

"contains no language barring transfers of principal to or for the benefit of Misiaszek," and thus permits her to exercise her limited power accordingly. Its contention is that Misiaszek could "enter a nursing facility with an express promise to pay for her care through [her limited] power of appointment," or she could incur a debt to the facility and then subsequently appoint trust principal to the nursing facility to pay the debt. MassHealth further argues that this permissible exercise of Misiaszek's limited power is corroborated by article 1.1, which states that the purpose of the trust is to "allow [the Misiaszeks] to live in the community as long as possible."

We are not persuaded because MassHealth's hypothesized appointment is not permitted under established principles of trust and property law. Neither party disputes that article 2.2 grants Misiaszek a limited power of appointment, which allows Misiaszek to appoint trust principal "to any one or more charitable or non-profit organizations over which [she has] no controlling interest . . . ." By definition, a "limited power of appointment" is a power that "restricts to whom the estate may be conveyed; esp[ecially], a power by which the donee can appoint to only the person or class specified in the instrument creating the power, but cannot appoint to oneself or one's own

estate." Black's Law Dictionary 1417 (11th ed. 2019).[11] The persons or entities to whom an appointment is authorized collectively are known as the class of "permissible appointees." See Restatement (Third) of Property: Wills and Other Donative Transfers § 17.2 (2011).

Our cases long have understood that, with respect to limited powers of appointment, the class of permissible appointees is restricted to the class of persons or entities specifically named in the limited power, and does not include by implication the donee of the limited power. See, e.g., Fiduciary Trust Co. v. First Nat'l Bank of Colo. Springs, Colo., 344 Mass. 1, 5 (1962), citing Restatement (First) of Property § 320 (1940) ("The power of appointment given to Francis under the Trust, however, was not a general testamentary power but a special or limited testamentary power of appointment. . . . He could, in fact, appoint only to his widow and his issue");

---

[11] In contrast to a "limited" or "special" power of appointment, a "general" power of appointment is "[a] power of appointment by which the donee can appoint -- that is, dispose of the donor's property -- in favor of anyone at all, including oneself or one's own estate . . ." (emphasis added). Black's Law Dictionary 1417 (11th ed. 2019). See Florez v. Florez, 441 Mass. 1004, 1005 (2004) (general power of appointment would give donee "the power to distribute the remaining trust assets in her will to whomever she chooses"). The distinction between the two is important for estate tax purposes, as assets subject to a "general" power of appointment are considered those of the donee and thus may be reached by the donee's creditors. See Shawmut Bank, N.A. v. Buckley, 422 Mass. 706, 712 & n.11 (1996), citing State Street Trust Co. v. Kissel, 302 Mass. 328, 335 (1939).

O'Brien v. Massachusetts Catholic Order of Foresters, 220 Mass. 79, 81 (1915) (donee possessed limited power of appointment, thus "[h]e was limited in making the appointment to his widow, children, relatives or dependents"). See also Fleet Nat'l Bank v. Mackey, 433 Mass. 1009, 1009 (2001) ("Richard has a limited power of appointment that enables him to designate the person or persons -- other than himself, his estate, his creditors, or creditors of his estate -- to whom the res of trust B is to be distributed on his death"). Accordingly, Misiaszek, as the donee of the limited power, cannot exercise the power to appoint any portion of the trust principal directly to herself.[12]

Similarly, the donee of a limited power of appointment may not circumvent the constraints on the power by appointing trust principal to a permissible appointee for the purpose of benefitting himself or herself. In Pitman v. Pitman, 314 Mass. 465, 467 (1943), the settlor of the trust at issue granted her son a testamentary limited power of appointment to appoint the trust assets to the descendants of the son's grandmother. Later, as part of a divorce settlement, the son agreed to assign to his former wife a portion of his interest in the trust, or,

[12] MassHealth appears to concede this point in its reply brief, stating that an appointment of trust principal to a donee of a limited power of appointment, "by definition, is not permitted . . . because [the power] is limited to specified permissible appointees."

in the alternative, to appoint the trust principal to his daughters. Id. at 467-468. The son expressly stated that the purpose of the arrangement was to discharge his obligation to pay alimony to his former wife under the divorce agreement. Id. at 468. The son executed a will exercising his limited power of appointment in favor of his daughters, and he specifically referenced the divorce agreement in his will. Id.

We held that the son's attempted exercise of his limited power of appointment in his will was invalid. We reasoned that the son could not validly assign any of his interest in the trust assets to his former wife in the divorce agreement because his interest was governed by the special power of appointment created by his mother's trust, and his former wife "was not one of the objects of the power." Id. at 476. In other words, the former wife was not a descendant of the grandmother, and thus was not within the limited power's class of permissible appointees. With respect to the will itself, we concluded that the son could not exercise his testamentary power of appointment in favor of his daughters because, even though his daughters did fall within the class of permissible appointees, the son's motivation for exercising his limited power -- namely, to benefit himself by satisfying his contractual obligations to his former spouse -- was contrary to the settlor's intent in

creating the trust, which was to benefit the grandmother's issue. Id. at 477. Specifically, we explained:

> "The exercise of the [limited] power [of appointment] was not a thing of barter or bargain, and there is a fraudulent exercise of a power not only where the donee acts corruptly for a pecuniary gain but where he acts primarily for his own personal advantage or that of a third person who is a non-object of the power and thereby abuses the power which the donor conferred on him."

Id. at 476. Therefore, we held that the son's attempted exercise of his limited power of appointment "constitute[d] an abuse of the power and render[ed] its exercise ineffectual." Id. at 477, citing Restatement (First) of Property § 353 (1940).

MassHealth argues that Pitman is distinguishable because "[w]here the donor and the donee [of a limited power of appointment] are the same person," as here, "there is no need to protect the donor-donee from her own actions." The problem, however, is that the court in Pitman made no such distinction.[13] Moreover, the Restatement (Third) of Property, which subsumed an

---

[13] The section of the Restatement that the court in Pitman cites in its holding, see Pitman, 314 Mass. at 477, states, in relevant part:

> "Where an appointment is made to an object in consideration of a benefit conferred upon or promised to a non-object[,] an element is injected into the motivation of the power which is foreign to the intent of the donor in creating the power for the benefit of the objects. Therefore, to whatever extent the appointment is induced by such a motive, it is ineffective."

Restatement (First) of Property § 353 comment a (1940).

earlier provision cited by the court in Pitman, see Reporters' Note to Restatement (Third) of Property: Wills and Other Donative Transfers § 19.16 (2011), similarly does not turn on the identity of the donee of the limited power:

> "An appointment to a permissible appointee is ineffective to the extent that it was (i) conditioned on the appointee conferring a benefit on an impermissible appointee, (ii) subject to a charge in favor of an impermissible appointee, . . . [or] (iv) in consideration of a benefit conferred upon or promised to an impermissible appointee . . . ."

Restatement (Third) of Property: Wills and Other Donative Transfers § 19.16 (2011). Simply put, the court in Pitman was concerned not with who possesses the limited power of appointment, but rather with how the limited power is used with respect to the terms of the trust.[14]

Furthermore, we are unpersuaded that the terms of the Misiaszek trust must expressly bar Misiaszek from exercising her limited power of appointment for her own benefit, as MassHealth contends. MassHealth does not cite, nor are we aware of, any Massachusetts case that has imposed such a rigid requirement on the construction of a trust. On the contrary, "a provision

---

[14] MassHealth also cites a New York statute that prohibits donees of testamentary powers of appointment from entering into contracts during their lifetime binding the exercise of their power. See N.Y. Est. Powers & Trusts Law § 10-5.3(a). We find the New York statute to be inapposite here. Indeed, MassHealth does not cite, and we are not aware of, any analogous Massachusetts statute or case that distinguishes between exercises of a limited power of appointment based on the identity of the donee or powerholder.

making trust principal available to persons other than the grantor does not by its nature make it available to the grantor." Heyn, 89 Mass. App. Ct. at 318. It generally is accepted that "[t]he donor may define the permissible appointees of a nongeneral power by exclusion, by inclusion, or by a combination of the two. . . . If they are defined by inclusion, the donor lists the persons to whom a valid appointment can be made." Restatement (Third) of Property: Wills and Other Donative Transfers § 19.15 comment d (2011). Article 2.2 defines the class of permissible appointees by inclusion, specifically by referencing "any one or more charitable or non-profit organizations over which [Misiaszek has] no controlling interest" as objects of the appointment power. Accordingly, the absence of express language prohibiting Misiaszek from exercising her limited power for her benefit does not in turn permit Misiaszek to do so.

Construed as a whole, the terms of the Misiaszek trust reflect Misiaszek's intent to benefit from the income of the trust, while generally preserving the principal for her children and their issue upon the termination of the trust. MassHealth correctly notes that the stated purpose of the trust, according to article 1.2, is to "manage [Misiaszek's] assets and to use them to allow [Misiaszek] to live in the community as long as possible." This purpose is directly advanced by two subsequent

trust provisions. First, article 2.1 provides that the trustee "may pay on [Misiaszek's behalf] as much of the income of the trust as it shall determine in its sole and non-reviewable discretion to be necessary for [Misiaszek's] care and well-being" (emphasis added). Second, article 2.3 provides that Misiaszek "shall have the right to use and occupy any residence that may from time to time be held in trust hereunder." Indeed, the board hearing officer found that from the time when the home was deeded to the trust in 2002 until she moved into a nursing home and applied for MassHealth benefits in May 2017, Misiaszek continued to reside in the home in accordance with this provision. As we held in Daley, 477 Mass. at 203, this right to reside in the home held in trust does not render the home itself countable as an asset for purposes of determining Misiaszek's MassHealth eligibility. The same applies to any income payments Misiaszek was to receive from the trust -- such payments "may affect the amount of Medicaid benefits to be received but not the applicant's eligibility for such benefits" (emphasis in original). Id. at 194, citing Guerriero v. Commissioner of the Div. of Med. Assistance, 433 Mass. 628, 632 n.6 (2001), and 130 Code Mass. Regs. § 520.026 (2013).

Elsewhere, the terms of the trust impose clear limitations on how the trust principal may be disposed of or distributed. Article 2.1 provides that, except by way of Misiaszek's limited

power of appointment to nonprofit or charitable organizations under article 2.2, the "principal shall be held until the termination of this trust," which, under article 3.1, is to occur either upon Misiaszek's death or at the trustee's sole discretion that the trust should be terminated. At such time, article 3.2 directs the trustee to "[p]ay the remaining principal and undistributed income in equal shares" to Misiaszek's children or their issue, as beneficiaries of the trust.

Taken together, the terms of the Misiaszek trust only permit Misiaszek to live in the home during her lifetime, to receive payments of trust income, and to make charitable contributions to organizations in which she has no interest. She is not permitted to receive any distribution of trust principal from the trustee, and the termination of the trust is contingent on events beyond her control. We do not discern from the trust language any intent for Misiaszek to benefit personally from any distribution of the trust principal.[15]

---

[15] To underscore this point, the terms of the Misiaszek trust stand in stark contrast with those of the trust at issue in Petition of Estate of Braiterman, 169 N.H. 217 (2016) (Braiterman), a case cited by MassHealth. In Braiterman, the New Hampshire Supreme Court similarly considered whether assets held in an irrevocable trust were countable in determining the settlor-applicant's eligibility for Medicaid benefits. Id. at 218. As in this case, the applicant in Braiterman held a limited power under the trust -- there to appoint the trust principal to any one or more of her children, who together

"In determining the meaning of a contractual [or trust] provision, the court will prefer an interpretation 'which gives a reasonable, lawful and effective meaning to all manifestations of intention, rather than one which leaves a part of those manifestations unreasonable, unlawful or [of] no effect.'" Ferri, 476 Mass. at 654-655, quoting Siebe, Inc. v. Louis M. Gerson Co., 74 Mass. App. Ct. 544, 550 n.13 (2009). Applying Pitman and § 19.16 of the Restatement (Third) of Property (2011) to this case, we construe the trust at issue as providing that Misiaszek, as the donee of the limited power of appointment, may not exercise the power for her benefit by appointing the trust principal to a permissible appointee, such as a nonprofit nursing home, on the condition that the trust principal be used to pay for Misiaszek's long-term care. As in Pitman, such an appointment would be motivated to benefit an impermissible

---

constituted the class of permissible appointees. Id. at 219-220. Unlike the Misiaszek trust, however, the Braiterman trust contained express language permitting the trustee, in the event the applicant's Medicaid benefits were jeopardized, to terminate the trust and distribute the trust principal to the appointees. Id. at 220. As expressed in the terms of the trust, the settlor's "hope" was that the appointees would "supplement the income and the governmental benefits and services to which the [applicant] may be entitled." Id. The New Hampshire Supreme Court relied on this language to conclude that the trust assets were countable, as the plain terms of the trust "evince[d] the applicant's general intent that Trust disbursements be used for her benefit." Id. at 227-228. The Misiaszek trust does not contain any analogous provision; on the contrary, the terms of the Misiaszek trust evince Misiaszek's clear intent to place the trust principal out of her reach.

appointee -- in this case, both the donor and the donee of the limited power -- and thus would be ineffective as a matter of law as a "fraudulent exercise of [the] power." Pitman, 314 Mass. at 476.[16] This constraint on Misiaszek's limited power is further evidenced by the plain terms of the trust, which state that the principal is to be held until the termination of the trust, at which time that principal is to be distributed to Misiaszek's children or their issue. Accordingly, we conclude that the terms of the Misiaszek trust do not, under any circumstances, allow Misiaszek to exercise her limited power of appointment over the trust principal for her benefit, including

---

[16] MassHealth argues that "[S]tate law principles do not necessarily control the [F]ederal law analysis of Medicaid eligibility." To the extent MassHealth's contention is that State trust and property law do not factor into our analysis, this argument is misguided. We routinely have looked to established principles of trust and property law for guidance when applying the Federal "any circumstances" test for Medicaid eligibility. See, e.g., Guilfoil, 486 Mass. at 800 (applying principles of property law to conclude that "the retention by an applicant of a life estate in his or her primary residence [held in trust] does render the property a countable asset" for Medicaid eligibility determination); Guerriero, 433 Mass. at 632-633, citing Restatement (Second) of Trusts (1959) ("there were no remaining circumstances in which the trustee retained discretion to pay out principal to" settlor for purposes of determining settlor's eligibility for MassHealth benefits). Because the Medicaid program is, by design, a partnership between the Federal and State governments, "Congress did not pass a [F]ederal body of trust law, estate law, or property law when enacting Medicaid. It relied and continues to rely on [S]tate laws governing" the operation of trusts for purposes of determining an applicant's eligibility for Medicaid benefits. Lewis v. Alexander, 685 F.3d 325, 347 (3d Cir. 2012), cert. denied, 568 U.S. 1123 (2013).

by appointing the trust principal to a nonprofit or charity-run nursing home for the purpose of paying for her care.

3. Fiduciary duties. In addition, we conclude that the terms of the Misiaszek trust do not permit Misiaszek to exercise her limited power of appointment for her benefit because doing so would require the trustee to violate her fiduciary duties to Misiaszek's children as the ultimate beneficiaries of the trust principal.

It is well-established that "a trustee holds 'full legal title to all property of a trust and the rights of possession that go along with it.'" Ferri, 476 Mass. at 660, quoting McClintock v. Scahill, 403 Mass. 397, 399 (1988). See 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"). Despite holding a limited power of appointment, Misiaszek cannot herself disburse the trust principal because she no longer holds legal rights to the home held in trust. Practically speaking, then, Misiaszek would need to rely on the trustee to effectuate the appointment by having the trustee disburse the trust principal to the permissible appointee.[17] Thus, in order for Misiaszek to appoint

[17] MassHealth does not contest this point, as it acknowledges in its reply brief that "it might be necessary for the [t]rustee to take some action to implement Misiaszek's exercise of the power of appointment" (emphasis in original).

any portion of the trust principal to a nonprofit nursing home as payment, the trustee "literally and figuratively" would need to write the check to facilitate the appointment.[18]

This act, however, would violate the trustee's fiduciary duties to Misiaszek's children as the ultimate beneficiaries of the trust principal. Article 4.9 states that "[a]ll powers and discretion given to [the] trustee are exercisable only in a fiduciary capacity, in accordance with reasonable discretion." In addition, the trustee is required by the Massachusetts

---

[18] The parties dispute whether this action by Misiaszek would constitute a "power to direct" under G. L. c. 203E, § 808, added by St. 2012, c. 140, § 56. See note 19, infra (application to existing trusts). That statute provides, "A person who holds a power to direct is presumptively a fiduciary who is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries." G. L. c. 203E, § 808 (c). A "power to direct" refers to a power the settlor grants to a person other than the trustee with respect to the administration of the trust. See A.M. Hess, G.G. Bogert, & G.T. Bogert, Trusts and Trustees § 138 (rev. 2d ed. Supp. 2020). This individual, commonly known as a "trust director," can be given powers "to direct the trustee in acts of investments, distributions, and borrowing and lending money," or even "the power to remove and replace the directed trustee or amend the trust instrument." Id. Notwithstanding the dearth of case law interpreting this statute, we note that the terms of the Misiaszek trust do not grant Misiaszek any express power to "direct" the trustee. Indeed, article 2.2 states that Misiaszek may exercise her limited power "by an instrument in writing by [herself]." Rather, Misiaszek would rely on the trustee, as a practical matter, to effectuate her appointment, as it is the trustee who holds legal title to the trust assets. Accordingly, we agree with MassHealth that G. L. c. 203E, § 808 (c), does not apply here.

Uniform Trust Code[19] to "administer the trust solely in the interests of the beneficiaries." G. L. c. 203E, § 802 (a). See G. L. c. 203E, § 801 ("Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries" [emphasis added]). "If the trustee violates any duty to a beneficiary, the trustee will be liable for 'breach of trust.'" Guerriero, 433 Mass. at 632, citing Restatement (Second) of Trusts § 201 (1959). Because an appointment of the trust principal to a nonprofit or charitable nursing home as payment for Misiaszek's care would be solely for Misiaszek's benefit, and Misiaszek herself is an impermissible appointee, the trustee would not be able to effectuate the appointment without exposing herself to civil liability for violating her fiduciary duties to Misiaszek's children. These concerns further underscore our conclusion that the plain terms of the Misiaszek trust neither intend for nor permit Misiaszek to exercise her limited power of appointment for her benefit as contemplated by MassHealth.

---

[19] The Massachusetts Uniform Trust Code (MUTC) took effect July 8, 2012. See St. 2012, c. 140. Pursuant to its enabling legislation, except as otherwise provided, the MUTC's provisions "apply to all trusts created before, on or after the effective date" of the act. Matter of the MacMackin Nominee Realty Trust, 95 Mass. App. Ct. 144, 149 (2019), quoting St. 2012, c. 140, § 66 (a) (1).

Conclusion. For the foregoing reasons, we affirm the judgment of the Superior Court.

Judgment affirmed.