STATE OF MICHIGAN

COURT OF APPEALS

RALPH HEGADORN, Personal Representative of the ESTATE OF MARY ANN HEGADORN

Appellee,

v

LIVINGSTON COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Appellant.

FOR PUBLICATION
October 19, 2023
9:10 a.m.

No. 356756
Livingston Circuit Court
LC No. 20-000171-AA

Before: M. J. KELLY, P.J., and CAMERON and HOOD, JJ.

HOOD, J.

Appellant Livingston County Department of Health and Human Services (MDHHS) appeals by leave granted[1] the circuit court order reversing the decision of the administrative law judge (ALJ), and awarding Medicaid benefits to the Estate of Mary Ann Hegadorn (the estate), whose personal representative is Ralph Hegadorn (Mr. Hegadorn). The broad issue, as before, is the eligibility of now-deceased Mary Ann Hegadorn (Mrs. Hegadorn or Mary Hegadorn) for long-term care Medicaid benefits and the impact of certain trust documents on her eligibility. The granular and decisive issue is whether there were any circumstances under which the proceeds of the "Ralph D. Hegadorn Irrevocable Trust No. 1 (Sole Benefit Trust)" (Hegadorn SBO Trust) could be paid to Mrs. Hegadorn or for her benefit. This necessarily required consideration of the terms of a second trust that the Hegadorn SBO Trust contemplated creating, but that is not part of the record. On remand, the administrative law judge failed to follow our Supreme Court's direction to address whether there were any circumstances under which Mary Hegadorn could receive the Hegadorn SBO Trust principal. On review, the circuit court answered this question, but misapplied the law to the facts of this case. We therefore affirm the circuit court in part, reverse in part, and remand to the ALJ for further proceedings.

[1] *Hegadorn Estate v Livingston Cty Dep't of Health & Human Servs*, unpublished order of the Court of Appeals, entered August 17, 2021 (Docket No. 356756).

I. BACKGROUND

This case has a long procedural history and this is the second time this case is before this Court. See *Hegadorn v Dep't of Human Servs Dir*, 320 Mich App 549, 555; 904 NW2d 904 (2017) (*Hegadorn I*), rev'd *Hegadorn v Dep't of Human Servs Dir*, 503 Mich 231; 931 NW2d 571 (2019) (*Hegadorn II*). The issues in this case turn on the terms of two documents: the Hegadorn SBO Trust and the Special Supplemental Care Trust for Mary Ann Hegadorn (Supplemental Care Trust).

A. HEGADORN APPLIES FOR MEDICAID BENEFITS

On December 20, 2013, Mrs. Hegadorn, an "institutionalized spouse"[2] under the Medicaid program, began receiving long-term care at a nursing home in Howell, Michigan. To be eligible to receive Medicaid long-term benefits to pay for her care, Mrs. Hegadorn's countable assets could not exceed $2,000. To meet this threshold, on January 23, 2014, Mr. Hegadorn, a "community spouse,"[3] established and funded the Hegadorn SBO Trust. Mr. Hegadorn was the trust beneficiary for the Hegadorn SBO Trust. Neither he nor his wife was the trustee or successor trustee. As our Supreme Court observed in *Hegadorn II*, "Section 2.2. of the Hegadorn Trust states that 'Trustee shall distribute the Resources of the Trust at a rate that is calculated to use up all of the Resources during' Mr. Hegadorn's expected lifetime, and it includes a suggested distribution schedule that is based on the [MDHHS's] policies." *Hegadorn II*, 503 Mich at 240-241. The Hegadorn SBO Trust also lists another trust as a possible residual beneficiary, stating:

> At my death, if my Spouse is surviving, Trustee shall distribute the remaining trust property to the trustee of the Special Supplemental Care Trust for Mary Ann Hegadorn, created by my Will dated the same day as this Agreement, as my Will may be amended from time to time. [*Id.*, quoting Hegadorn Trust, § 3.3 (formatting altered in *Hegadorn II*, 503 Mich at 240-241).]

In other words, Mrs. Hegadorn and her husband created the Hegadorn SBO Trust to make her eligible for Medicaid long-term care benefits, and designed it in a way that contemplated Mr. Hegadorn using the trust assets during his life. In the event that he died first, the Hegadorn SBO Trust would fund a new trust, the Supplemental Care Trust. As described below, over this case's procedural history, the administrative apparatus and courts have scrutinized the terms of the Hegadorn SBO Trust. The Supplemental Care Trust, however, does not appear to be part of the record and its terms are unknown.

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[2] "An 'institutionalized spouse' is a person who is in a 'medical institution or nursing facility' or who is described in 42 USC 1396a(a)(10)(A)(*ii*)(VI), is likely to meet these requirements 'for at least 30 consecutive days,' and is married to a person who is not in such a facility." *Hegadorn II*, 503 Mich at 237 n 2, citing 42 USC 1396r-5(h)(1)(A) and (B).

[3] "A 'community spouse' is 'the spouse of an institutionalized spouse.' " *Hegadorn II*, 503 Mich at 238 n 3.

On April 24, 2014, Mrs. Hegadorn applied for Medicaid benefits to pay for her long-term care. MDHHS denied her application, determining that the assets in the Hegadorn SBO Trust were countable assets, and her countable assets exceeded the applicable financial eligibility limit, known as the community spouse resource allowance (CSRA).[4]

B. HEGADORN APPEALS DENIAL TO ADMINISTRATIVE LAW JUDGE

Mrs. Hegadorn appealed, and following an administrative hearing, the ALJ upheld MDHHS's decision. The ALJ concluded that Mrs. Hegadorn and her husband's combined assets were $487,755.33 when she entered the nursing home on December 20, 2013. *Hegadorn I*, 320 Mich App at 555. The CSRA was fixed at $115,920, leaving countable assets totaling $371,835.33, which would disqualify Mrs. Hegadorn from Medicaid eligibility. *Id.* at 555-556. Regarding these calculations, the ALJ explained that a person's countable assets include "the value of the trust's countable income if there is any condition under which the income could be paid to or on behalf of the person." *Id.* at 556 (quotation marks omitted). And because the Hegadorn SBO Trust required that the trust principal be distributed to Hegadorn's husband during his lifetime, the ALJ concluded that those assets "could be paid to or on behalf of the person," and therefore were countable toward the CSRA. *Id*. Essentially, the ALJ concluded that a trust payment to Hegadorn's husband was effectively a payment for her benefit because of the nature of marriage.

C. CIRCUIT COURT REVERSES ALJ

Mrs. Hegadorn appealed to the Livingston County Circuit Court, which reversed the ALJ's decision and ordered Medicaid benefits to begin as of the date she applied for benefits. *Hegadorn I*, 320 Mich App at 559. The circuit court relied on a MDHHS memorandum from July 2014 to conclude that MDHHS had changed its policy after the trust was established in 2014. See *id*. at 559, 565 (noting the circuit court's reliance on *Hughes v McCarthy*, 734 F3d 473 (CA 6 2013) and Michigan Department of Human Services, *Bridges Eligibility Manual (BEM) 401*, 2014-015 (July 1, 2014), p 11). After the memorandum (*BEM 401*), all SBO trust assets were deemed countable, but the circuit court concluded that trusts established before the memorandum were not countable. *Id*. at 559. The circuit court therefore concluded that the Hegadorn SBO Trust assets were not countable.

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[4] "The spousal share allocated to the community spouse qualifies as the [community spouse resource allowance or] CSRA, subject to a ceiling . . . indexed for inflation' by Congress." *Hegadorn II*, 503 Mich at 251, quoting *Wisconsin Dep't of Health and Family Servs v Blumer*, 534 US 473, 482; 122 S Ct 962; 151 L Ed 2d 935 (2002). The CSRA is the maximum value of assets that a community spouse can retain (or that can be transferred to the community spouse) without MDHHS counting those resources against the institutionalized spouse or her initial eligibility determination. *Hegadorn II*, 503 Mich at 251, citing 42 USC 1396r-5(c)(2)(B) and (f); *Blumer*, 534 US at 482-483. If resources exceed the CSRA, an institutionalized spouse will generally be disqualified from receiving Medicaid benefits unless they are spent down prior to filing an application. *Hegadorn II*, 503 Mich at 251, citing 42 USC 1396r-5(c)(2); *Blumer*, 534 US at 482-483.

D. *HEGADORN I*: COURT OF APPEALS REVERSES CIRCUIT COURT

This Court granted MDHHS's application for leave to appeal and consolidated the case with *Lollar v Dep't of Human Servs Dir* and *Ford v Dep't of Health and Human Servs*, both of which also involved the denial of Medicaid benefits to pay for the long-term care of applicants whose husbands had created SBO trusts. *Hegadorn II*, 503 Mich at 238; *Hegadorn I*, 320 Mich App at 549. In *Hegadorn I*, this Court upheld the denial in all three decisions, reasoning that the critical issue was whether there was any condition under which the principal of the irrevocable trusts could be paid to or on behalf of the person from an irrevocable trust. *Hegadorn I*, 320 Mich App at 561, citing *BEM 401*. After considering the language of the trusts, which were largely identical as it related to distributions to each husband "or for my sole benefit, during my lifetime," in "an actuarially sound basis," the Court concluded that the trust assets were countable. *Id*. at 563. Relying on *BEM 401* and *BEM 405*, it concluded that the trusts, though designed to be used up by the spouses during their lifetimes, still included a condition under which the principal could be paid to or on behalf of the person from an irrevocable trust," and MDHHS therefore properly determined the assets to be countable. *Id*. at 563, citing Michigan Department of Human Services, *BEM 405*, BPB 2015-0'0 (July 1, 2015), p 12, and *BEM 401*, p 12.

E. *HEGADORN II*: SUPREME COURT REVERSES COURT OF APPEALS AND ALJ

Our Supreme Court reversed, finding that both the ALJ and this Court misread the operative statute, 42 USC 1396p(d). *Hegadorn II*, 503 Mich at 268-269. The Court held that the principal of an irrevocable trust formed solely for the benefit of a community spouse (like the Hegadorn SBO Trust) "is not per se a 'resource available' to an institutionalized spouse under 42 USC 1396r-5(c)(2) for the purpose of determining an institutionalized spouse's eligibility for Medicaid benefits." *Hegadorn II*, 503 Mich at 264-265.

In reaching its conclusion, the Supreme Court first summarized the two computations required under 42 USC 1396r-5 (providing the treatment of income and resources for institutionalized spouses) to determine whether an institutionalized spouse is eligible for Medicaid benefits: first, the total joint resources during the first continuous period of institutionalization; and second, the resources available to the institutionalized spouse on the date of the application for Medicaid benefits. *Hegadorn II*, 503 Mich at 250-254, 263-265. The "any-circumstances" inquiry at issue in this case is a component of the second computation. See *Hegadorn II*, 503 Mich at 262-263.

The first computation determines the total joint resources of the institutionalized spouse and the community spouse " 'as of the beginning of the first continuous period of institutionalization,' which may or may not be the same month in which one applies for benefits.' " *Hegadorn II*, 503 Mich at 250-251, quoting 42 USC 1396r-5(c)(1)(A). MDHHS makes this computation in order to determine the CSRA:

> One-half of the total value of their countable resources "to the extent either the institutionalized spouse or the community spouse has an ownership interest" is considered a spousal share.

> "The spousal share allocated to the community spouse qualifies as the . . . CSRA, subject to a ceiling . . . indexed for inflation" by Congress. The CSRA is the monetary value of assets that may be retained by or transferred to the community spouse without those resources being counted against the institutionalized spouse for his or her initial eligibility determination. Available resources in excess of the CSRA will generally disqualify an institutionalized spouse from receiving Medicaid benefits unless they are spent down prior to filing an application. [*Id*. at 251 (citations omitted).]

The second computation identifies "the resources available to the institutionalized spouse" as of the day they submit the application for Medicaid benefits. *Hegadorn II*, 503 Mich at 251-252. The agency makes this computation to determine "the institutionalized spouse's initial Medicaid eligibility." *Id*. at 251. " 'In determining the resources of an institutionalized spouse at the time of application for benefits . . . , all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse' to the extent that they exceed the CSRA." *Id*. at 252, quoting 42 USC 1396r-5(c)(2)(A and (B) (emphasis omitted).

The Court explained that the resource allocation provisions of the Medicare Catastrophic Coverage Act, 42 USC 1396r-5, "are silent with regard to the treatment of assets held by a trust." *Hegadorn II*, 503 Mich at 252. It noted that, as a general legal principle, an irrevocable trust's principal is not available to either the institutionalized spouse or the community spouse because it is held by the trustee. *Id*. at 253-254. But the Court observed, under the Medicaid trust rules, specifically 42 USC 1396p(d), the principal may still be viewed as available to the institutionalized spouse. *Id*. at 254.

Hegadorn II summarized the situations in which a trust resource would be "available" to an institutionalized spouse, as situations satisfying the three criteria under 42 USC 1396p(d):

> [T]he principal of an irrevocable trust formed solely for the benefit of a community spouse is not per se a "resource available" to an institutionalized spouse under 42 USC 1396r-5(c)(2) for the purpose of determining an institutionalized spouse's eligibility for Medicaid benefits. Assets making up the principal of such a trust are not automatically considered countable assets for Medicaid eligibility determinations. However, the principal of an irrevocable trust may become a resource available to an institutionalized spouse, and thus a countable asset, if the following conditions are met: (1) assets of the institutionalized spouse are used to form the principal of the trust, 42 USC 1396p(d)(2)(A); (2) the institutionalized spouse, his or her spouse, or one of the other entities listed under 42 USC 1396p(d)(2)(A)(i) through (iv) established the trust using a means other than a will; and (3) there are "any circumstances under which payment from the trust could be made to or for the benefit of" the institutionalized spouse, 42 USC 1396p(d)(3)(B)(i). [*Hegadorn II*, 503 Mich at 264-265 (emphasis omitted).]

In other words, the trust principal counts if (1) the institutionalized spouse's assets form the principal, (2) the institutionalized spouse (or their spouse or an entity listed in 42 USC

1396p(d)(2)(A)(i) through (iv)) created the trust through means other than a will,[5] and (3) there are any circumstances under which payment from the trust could be made for the benefit of the institutionalized spouse. See *id*. To make this determination, the Court explained, the agency, ALJ, or court, must examine the language of the trust documents. *Id.* at 265.

Hegadorn II concluded that the first two prongs of this three-prong test were satisfied. *Hegadorn II*, 503 Mich at 265-266. Mrs. Hegadorn's assets formed the Hegadorn SBO Trust principal, and her husband created the Hegadorn SBO Trust through means other than a will. *Id*. at 265-269.

Regarding the third prong, what the Court described as the "any-circumstances rule," *Hegadorn II* concluded that the ALJ and Court of Appeals' analysis and conclusions relied on a misreading of the federal statutes. *Hegadorn II*, 503 Mich at 268-269. The Court therefore vacated the final administrative decision and reversed this Court's prior decision. *Id*. at 269. But, acknowledging the complexity of Medicaid and MDHHS's concerns regarding abuse, the Supreme Court declined to rule on whether the third prong was satisfied. *Id*. Instead it remanded to the ALJ, who "may have forgone consideration of alternative avenues of legal analysis." *Id*. at 269. It remanded the case to the ALJ for additional administrative hearings consistent with its opinion, including determining whether there were any circumstances under which the principal of the Hegadorn SBO Trust could be paid for Mrs. Hegadorn's benefit. *Id*. at 269-270.

F. ADMINISTRATIVE DECISION ON REMAND

On remand, the ALJ again affirmed the denial of Mrs. Hegadorn's Medicaid application. In doing so, the ALJ cited sections 2.2 and 3.3 of the Hegadorn SBO Trust:

> 2.2 *Distribution of Resources*. During each fiscal year of the Trust, Trustee shall from time to time during the fiscal year pay or distribute to me, or for my sole benefit, during my lifetime such part of all of the net income and principal ("Resources") of the Trust as Trustee determines is necessary in order to distribute the resources in an actuarilly sound basis. . . .
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> * * *
>
> 3.3 *Distribution if Spouse Survives*. At my death, if my Spouse is surviving, Trustee shall distribute the remaining trust property to the trustee of the Special Supplemental Care Trust for Mary Ann Hegadorn, created by my Will dated the

[5] The Court in *Hegadorn II* also concluded that MDHHS and this Court erred when they determined that the "individual" identified in 42 USC 1396p(d) can be the institutionalized spouse, the community spouse, or the two in combination. *Hegadorn II*, 503 Mich at 259. The "individual" referred to in the trust rules "is the institutionalized spouse, who is the Medicaid applicant." *Id*. at 255. The Supreme Court concluded that the test of 42 USC 1396p(d)(3)(B) foreclosed any contrary administrative interpretation or application of *BEM 401*. *Id*. at 266-267.

> same day as this Agreement, as my Will may be amended from time to time. [Hegadorn SBO Trust, §§ 2.2 and 3.3 (formatting altered).]

Relying on these provisions, the ALJ concluded that all the trust assets were countable, explaining that because "all assets are expected to be paid to [Mary Ann's] spouse[,] . . . there are conditions under which the principal could be paid to or on behalf of [Mary Ann] . . . ." In sum, the ALJ concluded that the any-circumstances rule had been satisfied, explaining:

> The Trustee was advised to distribute all the assets on an actuarially sound basis, which for Medicaid purposes means that it must be returned to Petitioner's spouse over his lifetime. BEM, Item 405 pages 11-12. The "available" standard used for assets does not apply to trusts. BEM, Item 400, page 12. Thus, even if the trust had limitations on the yearly amounts, all assets are expected to be paid to Petitioner's spouse so there are conditions under which the principal could be paid to or on behalf of the person and all assets are countable. BEM, Item 401, page 11. If the principal of the trust can be paid to the spouse at some time in the future, *and spouses are responsible for one another*, the condition, however remote, does exist. [Emphasis added.]

Notably, except for the last sentence of the above quoted language, this portion of the ALJ's decision is a verbatim reiteration of a passage included in its earlier 2014 decision. In other words, because Mr. Hegadorn would receive payments from the trust, and spouses are responsible for each other, a payment to Mr. Hegadorn satisfied the any-circumstances rule.

The ALJ also concluded that the Hegadorn SBO Trust was not in "effect until after the initial assessment, which is the determinative factor for what assets are countable for purposes of [the] Medical Assistance eligibility determination"; therefore, Mrs. Hegadorn "retained in excess of $2000 in countable, available assets, which must be counted for purposes of Medical Assistance benefit eligibility . . . ." This statement related to the first of the two calculations identified in *Hegadorn II*: the total joint resources during the first continuous period of institutionalization. The ALJ ended her analysis there without addressing the separate calculation related to the resources available to the institutionalized spouse the day of the application for Medicaid benefits. See *Hegadorn II*, 503 Mich at 250-252. As stated above, that day was after the creation of the Hegadorn SBO Trust.

G. CIRCUIT COURT'S REVIEW OF ALJ DECISION ON REMAND

Mr. Hegadorn appealed to the circuit court, and the circuit court reversed the ALJ's decision on remand and ordered MDHHS to approve Mrs. Hegadorn's application for Medicaid benefits. The circuit court noted that the Hegadorn SBO Trust did not provide payment to the institutionalized spouse even in the event of Mr. Hegadorn's death. Rather, the trust language provided that the residual assets would be transferred to a testamentary trust, which, the circuit court concluded, are specifically exempted from the "any-circumstances test" under 42 USC 1396p(d)(3)(B). In its written order, the circuit court made eight explicit findings including four relevant to this appeal:

5. [The] Administrative Law Judge decision was affected by a substantial and material error of law, to wit: The ALJ . . . did not adhere to the findings by the Michigan Supreme Court, and erroneously determined that the [Hegadorn SBO Trust] was "countable" to Mary Ann Hegadorn (the "institutionalized spouse") because it could make future payments to Ralph D. Hegadorn (Mary Ann's husband).

6. A trust created by Will is excluded from the "any circumstances" rule of 42 USC 1396p(d)(3)(B)[.]

7. A distribution from the [Hegadorn SBO Trust] to a trust created under Ralph D. Hegadorn's Will (or to the trustee of such a trust) is not a payment from that Sole Benefit Trust to or for the benefit of Mary Ann Hegadorn from the [Hegadorn SBO Trust].

8. No circumstances exist under which payments *from* the [Hegadorn SBO Trust] could be made to or for the benefit of Mary Ann Hegadorn . . . . [Formatting altered.]

MDHHS moved for reconsideration, and the circuit court denied the motion. This appeal followed.

H. THE SUPPLEMENTAL CARE TRUST

Despite this case's extensive history, our review of the record indicates that a document critical to the ALJ's analysis is not part of the record. As stated, the Hegadorn SBO Trust contains a contingency if Mr. Hegadorn predeceased Mrs. Hegadorn. The trust assets, through the function of Mr. Hegadorn's will, would fund the Supplemental Care Trust. Although this instrument is referenced throughout the record, the document itself and its terms are not part of the record.

II. STANDARD OF REVIEW

This case involves the circuit court's review of an administrative decision. The Michigan Constitution provides that all final decisions of any administrative officer or agency which are judicial or quasi-judicial and affect private rights are subject to direct review by the courts as provided by law. See Const 1963, art 6, § 28. "This review shall include, as a minimum, the determination whether such final decisions . . . are authorized by law . . . ." *Id.*

Under the Administrative Procedures Act, MCL 24.201 *et seq*., unless the law provides a different scope of review, a court may set aside an administrative decision if it violates the constitution or a statute, see MCL 24.306(1)(a), or if the decision is "[a]ffected by other substantial and material error of law," MCL 24.306(1)(f).

We review de novo issues of statutory interpretation. *Hegadorn II*, 503 Mich at 244-245. We likewise review de novo construction of the language of a trust document. *Id*. at 245.

III. LAW AND ANALYSIS

The circuit court correctly determined that the ALJ erred when it concluded that Ralph Hegadorn's entitlement to benefits under the Hegadorn SBO Trust on its own constituted a circumstance under which Mary Ann Hegadorn might benefit from that trust. It nonetheless erred when it concluded that the Hegadorn SBO Trust funding the Supplemental Care Trust did not constitute a circumstance under which a payment was made for the benefit of Mary Ann Hegadorn. To make this determination the reviewing tribunal would need to review the terms of the Supplemental Care Trust, which is not part of this record.

A. THE CIRCUIT COURT CORRECTLY REVERSED THE ALJ'S APPLICATION OF THE "ANY-CIRCUMSTANCES TEST"

The circuit court correctly concluded that the ALJ misapplied the law as directed by our Supreme Court in *Hegadorn II*. The ALJ made two critical errors. First, like its original review of MDHHS's denial, the ALJ treated Mr. Hegadorn and Mrs. Hegadorn as alter egos to reach the conclusion that a payment from the Hegadorn SBO Trust to Mr. Hegadorn was essentially for Mrs. Hegadorn's benefit. Our Supreme Court explicitly rejected this analysis. *Hegadorn II*, 503 Mich at 239. Second, the ALJ appears to have relied on only the first of the two required computations for determining Medicaid eligibility. See *id*. at 250-252.

The ALJ's first error was her reliance on the general customary expectation that "spouses are responsible for one another" to reach the legal conclusion that payments from the Hegadorn SBO Trust to Mr. Hegadorn constituted a circumstance, "however remote," under which Mrs. Hegadorn might receive benefit from the trust principal. This reflected a failure to appreciate that spouses retain avenues for obtaining and maintaining separate property, and that the law related to Medicaid eligibility, and estate planning, might and does reflect that.

In *Hegadorn II*, our Supreme Court explicitly rejected this reasoning. It specifically held that a trust's payments to "a community spouse does not automatically render the assets held by the trust countable for the purpose of an institutionalized spouse's initial eligibility determination." *Hegadorn II*, 503 Mich at 239. In reaching this conclusion, the Court in *Hegadorn II* rejected federal caselaw that rested on the presumption that trust proceeds benefiting one spouse automatically benefit the other. See *Hegadorn II*, 503 Mich at 268 & n 26 (rejecting the holding in *Johnson v Guhl*, 357 F3d 403, 409 (CA 3, 2004)). In *Johnson v Guhl*, the United States Court of Appeals for the Third Circuit held that the any-circumstances test is satisfied if nothing in the pertinent irrevocable trust specifically prevented the community spouse from sharing payments from it with the institutionalized spouse. *Johnson*, 357 F3d at 409. *Hegadorn II* disagreed:

> While the Third Circuit appears to agree that "the individual" refers to an applicant for or recipient of Medicaid benefits, its conclusory analysis disregards the statutory language requiring that the payment be a "payment *from the trust*" that "could be made *to or for the benefit of the individual*." 42 USC 1396p(d)(3)(B)(i) (emphasis added). The Third Circuit's broad language also effectively reads away any difference in the language used in the § 1396p(d)(3) any-circumstances rule and the § 1382b(e) any-circumstances rule. [*Hegadorn II*, 503 Mich at 268 n 26, citing *Johnson*, 357 F3d at 408-409.]

The ALJ therefore erred in concluding that a payment from the Hegadorn SBO Trust to Mr. Hegadorn was effectively for Mrs. Hegadorn's benefit.

The ALJ also erred when it treated as dispositive the fact that the Hegadorn SBO Trust was not in "effect until after the initial assessment, which is the determinative factor for what assets are countable for purposes of [the] Medical Assistance eligibility determination." This led to the conclusion that Mrs. Hegadorn still possessed the assets that funded the Hegadorn SBO Trust and therefore "retained in excess of $2000 in countable, available assets, which must be counted for purposes of Medical Assistance benefit eligibility." This also led the ALJ to end her analysis there. Instead, the ALJ should have addressed the separate calculation regarding resources available as of the day the institutionalized spouse applied for Medicaid benefits. See *Hegadorn II*, 503 Mich at 250-252. Here, that date was April 24, 2014, after Mr. Hegadorn established the Hegadorn SBO Trust.

Again, the Supreme Court has held that the principal of an irrevocable trust is properly considered a resource available to an institutionalized spouse if "(1) assets of the institutionalized spouse are used to form the principal of the trust; (2) the institutionalized spouse, his or her spouse, or one of the other [statutorily listed] entities established the trust using a means other than a will; and (3) there are 'any circumstances under which payment from the trust could be made to or for the benefit of' the institutionalized spouse." *Hegadorn II*, 503 Mich at 264-265, citing 42 USC 1396p(d)(2)(A), and quoting 42 USC 1396p(d)(3)(B)(i). With respect to the Hegadorn SBO Trust and Mary Ann Hegadorn, only the third of these factors is at issue. *Hegadorn II*, 503 Mich at 265-266.

The ALJ's two errors in following our Supreme Court's mandate in *Hegadorn II* prevented her from fully addressing this question: are there any circumstances under which a payment from the trust could be made for the benefit of Mary Ann Hegadorn? Its conclusion ignored the three-prong analysis that *Hegadorn II* explained as necessary under 42 USC 1396p(d) to determine whether the principal of an SBO trust "may become a resource to an institutionalized spouse, and thus a countable asset[.]" *Hegadorn II*, 503 Mich at 264-265.

B. THE CIRCUIT COURT ERRED BY APPLYING 42 USC 1396P(D)(2)(A)

The circuit court attempted to answer this question, but it reached the wrong conclusion. Although the circuit court correctly concluded that the ALJ erred in applying the law from *Hegadorn II* to the facts of this case, specifically the trust documents, the circuit court erred in concluding that the Supplemental Care Trust, the trust contemplated to be funded by the Hegadorn SBO Trust if Mr. Hegadorn had predeceased Mrs. Hegadorn, could not satisfy the any-circumstances test because it was created by a will.

The circuit court quickly and correctly resolved the question of whether a payment from the Hegadorn SBO Trust to Mr. Hegadorn was effectively a payment to Mrs. Hegadorn. (As stated, it was not.) It then focused the bulk of its any-circumstances analysis on provisions within the Hegadorn SBO Trust that would fund the Supplemental Care Trust for Mrs. Hegadorn in the event that she survived Mr. Hegadorn. It observed that, in the event that the Hegadorn SBO Trust still had assets upon the death of its sole beneficiary, Ralph Hegadorn, "the residual is transferred

to a testamentary trust." Relying on 42 USC 1396p(d)(3)(B), the circuit court concluded that these types of trusts are specifically exempt from the any-circumstance test. This was incorrect.

What our Supreme Court has called the "any-circumstances rule" flows from the language of 42 USC 1396p(d), which provides, in relevant part:

> (1) For purposes of determining an individual's eligibility for, or amount of, benefits under a State plan under this subchapter, . . . the rules specified in paragraph (3) shall apply to a trust established by such individual.
>
> (2)(A) For purposes of this subsection, an individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the following individuals established such trust other than by will:
>
> (i) The individual.
>
> (ii) The individual's spouse.
>
> * * *
>
> [(3)](B) In the case of an irrevocable trust—
>
> (i) 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, and payments from that portion of the corpus or income—
>
> (I) to or for the benefit of the individual, shall be considered income of the individual, and
>
> (II) for any other purpose, shall be considered a transfer of assets by the individual subject to subsection (c)[.]

Application of the any-circumstances rule requires a court or administrator to "consider not only obvious circumstances, but also those that are hypothetical or even unlikely." *Hegadorn II*, 503 Mich at 258. The fact that the Hegadorn SBO Trust assets might one day fund the Supplemental Care Trust, which is for Mary Hegadorn's benefit, very well may satisfy the any-circumstances test depending on the terms of the Supplemental Care Trust. The circuit court avoided addressing this issue by relying on the fact that the Supplemental Care Trust is created by a will, and therefore, according to the circuit court, excluded from the any-circumstance test.

This relied on a misreading of the statute. 42 USC 1396p(d)(2)(A) does not provide that a trust created by a will may never be considered a resource benefiting an institutionalized Medicaid applicant. See 42 USC 1396p(d)(2)(A). It only provides that a Medicaid applicant is viewed as establishing a trust if the applicant's assets formed at least part of the trust corpus, and the applicant (or certain others, including their spouse) "established such trust other than by a will." Therefore,

if the institutionalized spouse did not establish the trust under subsection (d)(2)(A), then, under 42 USC 1396p(d)(1), the rules provided in 42 USC 1396p(d)(3), including the any-circumstances rule, do not apply. To summarize and simplify, subsection (d)(1) says the rules in (d)(3) only apply to a trust created by an individual. Subsection (d)(2) defines which trusts are deemed to have been created by the individual, and trusts made by wills do not count.

A will created the Supplemental Care Trust, but Hegadorn and her spouse created the Hegadorn SBO Trust. The question, therefore, is not whether there was any circumstance under which the Supplemental Care Trust would make payment for her benefit. Rather, the question is whether the Supplemental Care Trust, through its creation, funding, and terms, amounted to a circumstance under which the Hegadorn SBO Trust is making a payment for her benefit.

The Hegadorns established the Hegadorn SBO Trust in part with Mary Hegadorn's assets and not through function of a will; therefore, the agency and the court had to apply the any-circumstances test. The circuit court correctly concluded that the Hegadorn SBO Trust providing benefits to Mary Ann Hegadorn's spouse, Ralph, was not itself a circumstance that amounted to benefits to Mary Ann. It also correctly focused its inquiry on whether the Supplemental Care Trust satisfied the any-circumstances test. It just never answered the question because it misapplied 42 USC 1396p(d).

We are unaware of, and the parties have not identified, a requirement in the rules or statute that when assets of the SBO trust transfer to another trust, the second trust must also comply with 42 USC 1396p(d)(2). The public policy underlying the omission of such a rule is obvious: if such a requirement existed, the unscrupulous could circumvent Medicaid rules by laundering assets through a shell-game of various irrevocable trusts. Then congressional "efforts to prevent spousal pauperization while at the same time limiting the ability of wealthier individuals to shelter income and assets using estate planning rules" would be undone. *Hegadorn II*, 503 Mich at 249.

C. THE MISSING TRUST DOCUMENT

The circuit court's error reveals a broader problem with the ALJ and MDHHS's analysis: the terms of the Supplemental Care Trust are unknown. To our knowledge, the record does not contain a copy of the "Special Supplemental Care Trust for Mary Ann Hegadorn" that the Hegadorn SBO Trust references in Section 3.3. Although the ALJ and circuit court both referenced Section 3.3., neither tribunal, nor the parties have addressed the particulars of the Supplemental Care Trust's terms, such as whether Mary Ann would have held title to the trust assets, be entitled to direct payments, or if the trustee's discretion regarding distributions were otherwise limited. In the context of other types of public assistance, settlors may design trusts with limitations so as not to exclude eligibility for public assistance. See, e.g., Social Security Program Operations Manual System (POMS) SI 01120.200B.12 (providing that a special needs trust beneficiary may be eligible to receive public assistance benefits), available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120200> (accessed September 29, 2023);[6]

[6] POMS SI § 01120.200B.12 provides:

POMS SI § 01120.200B.13 (describing "spendthrift clauses" which limit a beneficiary's access to trust assets, so that trust assets and payments are not countable as a resource).[7] See also POMS SI § 01120.200B.1 (discretionary trusts).[8] It remains unknown if the Supplemental Care Trust contains such limiting provisions. But it is undisputed that the purpose of the trust is to provide support for Mrs. Hegadorn. *Hegadorn II* instructs that when applying the any-circumstances rule, this Court should "consider not only obvious circumstances, but also those that are hypothetical or even unlikely." *Hegadorn II*, 503 Mich at 258. At the same time, this Court must consider the language of the trust document. *Id*. at 265. On this record, these two mandates conflict. On its plain terms, Section 3.3 of the Hegadorn SBO Trust contemplates a circumstance under which a payment is made for the benefit of Mary Ann Hegadorn. The nature of that benefit and whether the Supplemental Care Trust is countable is unknowable without the document.

Acknowledging the nuanced calculations required to determine Medicaid eligibility, our Supreme Court remanded this case to the ALJ on the understanding that it dispensed with these calculations due to a legal error. On remand, the ALJ again dispensed with the calculations due to a second closely-related legal error. We now remand to the ALJ a third time, with an even more limited mandate: to review the terms of the Supplemental Care Trust, determine whether under its terms its assets would have been countable in determining Mary Ann Hegadorn's Medicaid eligibility, and to apply the any-circumstances test and calculations described in *Hegadorn II*.

> A special needs trust, also known as a supplemental needs trust, may be set up to provide for a disabled individual's extra and supplemental needs other than food, shelter, and health care expenses that may be covered by public assistance benefits that the trust beneficiary may be eligible to receive under various programs.

[7] POMS SI § 01120.200B.13 provides in part:

> A spendthrift clause or spendthrift trust generally prohibits both involuntary and voluntary transfers of the trust beneficiary's interest in the trust income or principal. This means that the trust beneficiary's creditors must wait until the trust pays out money to the trust beneficiary before they can attempt to claim it to satisfy debts.
>
> It also means that, for example, if the trust beneficiary is entitled to $100 a month from the trust, the beneficiary cannot sell his or her right to receive the monthly payments to a third party for a lump sum. In other words, a valid spendthrift clause would make the value of the trust beneficiary's right to receive payments not countable as a resource.

[8] POMS SI § 01120.200B.1 provides:

> A discretionary trust is a trust in which the trustee has full discretion as to the time, purpose, and amount of all distributions. The trustee may pay all or none of the trust as he or she considers appropriate to, or for the benefit of, the trust beneficiary. The trust beneficiary has no control over the trust.

IV. CONCLUSION

For the reasons stated above, we affirm the circuit court's decision reversing the ALJ decision for misapplying *Hegadorn II* to the facts of this case. We reverse the circuit court's decision to the extent its conclusions relied on a misapplication of 42 USC 1396p(d). We remand to the ALJ for further proceedings consistent with this opinion. Specifically, the ALJ is directed to obtain the Supplemental Care Trust, review its terms, and apply the principles of *Hegadorn II* to the facts of this case. We do not retain jurisdiction.

/s/ Noah P. Hood
/s/ Michael J. Kelly
/s/ Thomas C. Cameron