

NEW MEDICAID REGULATORY SCHEME FOR TRUSTS IN WASHINGTON

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uncompensated transfer by the beneficiary, makes the use of a revocable trust exceptionally hazardous for persons who may need Medicaid.

X. *DECAMBRE* LIBERATES SNT DISTRIBUTIONS TO SUBSIDIZED HOUSING RESIDENTS

Many disabled persons maintain affordable housing by occupying rental housing that is subsidized by the U.S. Department of Housing and Urban Development pursuant to 42 U.S.C. 1437f. Usually, the tenant's monthly rental obligation in such housing is limited to 30% of their monthly income. However, some local administrators of this kind of housing have counted certain non-cash distributions from Special Needs Trusts as income for purposes of calculating the tenant's rental obligation, basing this on federal regulations at 24 CFR 5.609(c). (The DHUD regulations make clear that an irrevocable trust that is not controlled by the beneficiary is not a countable asset for eligibility purposes. 24 CFR 5.603(b).)

The United States Court of Appeals for the First Circuit, in *DECAMBRE V. BROOKLINE HOUSING AUTHORITY*, Nos. 15-1458, 15-1515, June 14, 2016, issued an extraordinarily detailed opinion holding that distributions of principal from an irrevocable, self-settled special needs trust (a D4A) should not be treated as income of a tenant in federally subsidized housing. The decision is based on the regulation that provides that "lump sum additions to family assets" are not treated as income. 24 CFR 5.609(c)(3). The court reasoned that had the tenant directly received the settlement proceeds that funded the trust, the lump sum receipt would not be counted as income. When the tenant diverted the settlement proceeds to a special needs trust, the proceeds retained their character as a lump sum addition, and this character was not changed when the trust later distributed the trust principal to, or for the benefit of, the tenant.

The *Decambre* decision stands as powerful and persuasive authority that most distributions from special needs trusts will not adversely affect the rental subsidy received by occupants of federally subsidized housing.