

LKR Alert

October 27, 2002

Littman Krooks & Roth P.C.

Elder Law and Medicaid

IRREVOCABLE TRUSTS ARE NO LONGER CONSIDERED PART OF THE MEDICAID ELIGIBILITY EQUATION

Effective September 11, 2002, based upon a federal court ruling, there has been a change in the law affecting the rules for determining the Medicaid eligibility of any applicant whose assets are held in a self-settled irrevocable trust which reserves a limited power of appointment (i.e., the power to change the beneficiaries). Verdow v. Sutkowy, 5:01-CV-1468 (US Dist. Ct. — ND, NY), 2002 WL 31027942 (NDNY).

NEW RULE: Under the new rule, a self-settled irrevocable trust which contains a provision reserving a limited power of appointment does not render the assets of the trust available when determining Medicaid eligibility — despite the remote possibility of collusion by shifting the beneficiaries to include others more inclined to revoke the trust.

OLD RULE: It was the practice of the New York City Human Resources Administration and the county social services (which was upheld by several administrative determinations made by the state Health Department) to deny applicants whose assets were held in irrevocable trusts containing a power of appointment provision. State and local officials had adopted the position that the remote possibility of a revocation as a result of collusion, rendered the entire corpus of the trust available to the applicant, and therefore available for determining Medicaid eligibility.

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Speakers

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