IN THE COURT OF APPEALS OF IOWA

No. 0-600 / 99-1554
Filed December 13, 2000

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LORRIE ROUSE,
Petitioner-Appellee,

vs.

IOWA DEPARTMENT OF HUMAN SERVICES,
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer, Judge.

The respondent appeals from the district court's ruling on judicial review reversing the determination the petitioner was ineligible to receive food stamps. **AFFIRMED.**

Thomas J. Miller, Attorney General, and Barbara E.B. Galloway, Assistant Attorney General, for appellant.

Thomas A. Mayes, Volunteer Attorney for Legal Services Corporation of Iowa, Waterloo, for appellee.

Heard by Streit, P.J., and Vogel and Hecht, JJ.

HECHT, J.

The Iowa Department of Human Services ("DHS") appeals from the district court's ruling on judicial review reversing the determination Lorrie Rouse was ineligible to receive food stamps. DHS claims the district court incorrectly concluded the conservatorship established with funds from the settlement of the Rouse's daughter's tort claim should be excluded from the computation of the $2000 resource limit for food stamps. We affirm the decision of the district court.

I. Factual Background and Proceedings. Rouse is a single mother with three minor children, including Whittnie. Whittnie was born on March 23, 1989. On August 18, 1995, Whittnie was struck by a car while riding her bicycle and she suffered a skull fracture and other injuries. The district court in Black Hawk County appointed Rouse as Whittnie's conservator and Rouse settled Whittnie's personal injury claim for $7500, plus medical expenses. From this amount, Rouse paid Whittnie's medical expenses of $1,315.18 and paid $1875 for attorney fees. The district court also authorized Rouse to spend $1000 to purchase various items for Whittnie, including a bed and a new bicycle. The district court ordered the remaining balance of $4625 to be placed in an interest bearing account for Whittnie's benefit until her eighteenth birthday. Rouse complied with the district court's order and deposited the remaining funds in a conservatorship account. Thereafter, Rouse withdrew a small amount of money to purchase school clothes for Whittnie but has made no other withdrawals from the account.

At the time of the establishment of the conservatorship, Rouse and her family received financial assistance through the Family Investment Program. As recipients of funds under this program, they also received food stamps. DHS conducted a review of Rouse's case in April of 1998 and concluded the conservatorship was a countable resource for purposes of determining the family's eligibility for food stamps. On August 10, 1998, DHS sent Rouse a "Notice of Decision" canceling her family's food stamp benefit because her countable resources exceeded the allowable limit of $2000.

Rouse filed an administrative appeal on August 17, 1998. After conducting an evidentiary hearing, an administrative law judge issued a decision on October 6, 1998, affirming the agency's action. Rouse requested the director of DHS to review the decision. The director affirmed the agency's action and adopted the ALJ's decision on December 7, 1998. Rouse filed a petition for judicial review on January 7, 1999. On September 2, 1999, the district court entered an order reversing the agency's decision and determined Rouse's family was eligible to receive food stamps. DHS appeals, asserting the district court incorrectly concluded the conservatorship funds were not accessible and therefore excluded from calculation of the family's resources for purposes of the Food Stamp Program.

II. Standard of Review. Our review of a district court's ruling on judicial review of agency action is at law. *Smith-Porter v. Iowa Dep't of Human Servs.*, 590 N.W.2d 541, 543 (Iowa 1999). Our review is limited to determining whether the district court correctly applied the law in exercising its judicial review function

pursuant to Iowa Code section 17A.19(8). *Ahrendsen ex rel. Ahrendsen v. Iowa Dep't of Human Servs.*, 613 N.W.2d 674, 676 (Iowa 2000). When we review a district court's judicial review decision, we apply the standards of section 17A.19(8) to the agency action to determine whether this court's conclusions are the same as those of the district court. *Holland Bros. Constr. Co. v. Iowa State Bd. of Tax Review*, 611 N.W.2d 495, 499 (Iowa 2000).

III. Merits. The Food Stamp Acts of 1964 and 1977 established the federal food stamp program. *See* 7 U.S.C. §§ 2011 *et. seq.* States are eligible to participate in the program provided they operate within the framework of the federal statute and regulations. 7 U.S.C. § 2020(a). Iowa has chosen to participate in the food stamp program and the state program is administered pursuant to Iowa Code section 234.12. *Lundy v. Iowa Dep't of Human Servs.*, 389 N.W.2d 392, 393-94 (Iowa 1986). DHS has adopted regulations to implement the program, which are located at 441 Iowa Administrative Code chapter 65.

The food stamp program established resource limits for families wishing to qualify to receive assistance under the program. The resource limit for Rouse and her family is $2000. 7 U.S.C. § 2014(g). Resources are defined as "cash on hand, money in checking or savings accounts, savings certificates, stocks or bonds, . . . personal property, licensed and unlicensed vehicles, buildings, land, ..." 7 C.F.R. § 273.8(c)(1), (c)(2). If a resource is "not accessible" to the family, it is excluded from the calculation determining eligibility for food stamps. 7 C.F.R. § 273.8(e)(8).

Neither the Iowa Administrative Code nor the Code of Federal Regulations specifically discusses whether funds held in conservatorships are accessible to the family in order to determine eligibility to receive food stamps. However, other provisions of the Iowa Administrative Code are of assistance in determining this matter. The Iowa Administrative Code clearly regulates conservatorships in the provisions administering another federally funded assistance program – the Family Investment Program (formally the Aid to Dependant Children program). When considering whether to include funds in trusts or conservatorships in a family's resource calculation for the Family Investment Program, the Administrative Code provides the following guidelines:

> The department shall determine whether assets from a trust or conservatorship, except one established solely for the payment of medical expenses, are available by examining the language of the trust agreement or order establishing a conservatorship.
>
> a. Funds clearly conserved and available for care, support, or maintenance shall be considered toward resource or income limitations.
>
> b. When assets in the trust or conservatorship are not clearly available, central office staff may contact the trustee or conservator and request that the funds in the trust or conservatorship be made available for current support and maintenance. When the trustee or conservator chooses not to make the funds available, the department may petition the court to have the funds released either partially or in their entirety or as periodic income payments. *Funds in a trust or conservatorship that are not clearly available shall be considered unavailable until the trustee, conservator or court actually makes the funds available.* Payments received from the trust or conservatorship for basic or special needs are considered income.

Iowa Admin. Code 441-41.26(239B) (emphasis added). This rule expresses a clear intent to treat funds in trusts and conservatorships in an identical fashion for the purposes of determining whether the funds should be included in a resource

calculation. This provision also supports the district court's legal determination we must consider whether the funds are "clearly available" or accessible to the family.

We conclude funds contained in a conservatorship are analogous to funds contained in a trust when determining whether the funds are included or excluded from the family's resources. The Code of Federal Regulations controlling the administration of the food stamp program uses the following considerations to determine whether trust funds should be considered a countable resource:

> (e) Exclusions from resources. In determining the resources of a household, only the following shall be excluded:
> . . .
> (8) Resources having a cash value which is not accessible to the household, *such as but not limited to*, irrevocable trust funds . . . . Any funds in a trust or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, shall be considered inaccessible to the household if:
> (i) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;
> (ii) The trustee administering the funds is either: (A) A court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or (B) an individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph;
> (iii) Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and
> (iv) The funds held in irrevocable trust are either: (A) Established from the households own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the education or medical expenses of any person named by the household creating the trust, or (B) established from nonhousehold funds by a nonhousehold member.

7 C.F.R. § 273.8(e)(8)(emphasis supplied). We must now determine whether the district court correctly applied these provisions to the present case.

The district court ordered the following restrictions when creating Whittnie's conservatorship:

> That the proceeds of the settlement in the amount of $4,625.00 be placed in an insured institution to ensure that the funds are available to the minor on her 18th birthday; that said funds and conservatorship are to be administered by the conservator until the minor child reaches her 18th birthday. That annual reports be waived after the first said report as long as said funds remain in an insured account receiving interest and that the conservator herein shall not be required to furnish bond in this matter. That on the 18th birthday of the above-named ward, the conservator is hereby required to file a report with this court showing the distribution of the proceeds.

By the terms of the order authorizing the conservatorship, the conservatorship is not likely to end before the conclusion of Rouse's certification period because it is to remain in effect until Whittnie's eighteenth birthday, which will be March 23, 2007. Rouse does not have the authority to revoke the arrangement or change the name of the beneficiary of the conservatorship. Furthermore, the conservatorship is administered by Rouse by appointment of the court and subject to the limitations prescribed by the district court that entered the order of conservatorship. The funds do not "involve or assist" any business or corporation under the control of a household member. Finally, the conservatorship was established from a personal injury settlement derived from nonhousehold funds received from a nonhousehold member, the tortfeasor in Whittnie's personal injury action.

We agree with the district court's conclusion there are significant restrictions on Rouse's use of the conservatorship funds. In order to have legal access to the money in the account, Rouse, as conservator, must provide notice, request approval from the court, and then be subject to a hearing in the matter. *See* Iowa Code § 633.647. Rouse has limited powers as conservator absent an order from the district court. *See* Iowa Code § 633.646. In addition, Rouse, as conservator, is subject to upholding the fiduciary duties she owes to Whittnie as the ward of the conservatorship. *See* Iowa Code § 633.641. Therefore, the funds in Whittnie's conservatorship are not clearly available to Rouse's family. The district court correctly concluded the funds in the conservatorship are not accessible and should not be included when determining the family's eligibility for food stamps.

AFFIRMED.