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July 11, 2017

By Hand

Chief Justice Ralph D. Gants
Supreme Judicial Court for the Commonwealth
John Adams Courthouse, Suite 2500
One Pemberton Square
Boston, MA 02108

Re: Daley v. Secretary of Executive Office of Health and Human Services et al., SJC-12200

Dear Chief Justice Gants:

In response to this Court's invitation, *see* Mass. R. App. P. 27(a), the appellee Secretary of the Executive Office of Health and Human Services hereby responds to the petition for rehearing filed by Appellant Mary Daley in this matter.

The petition raises three issues. The first is a request that this Court decide the tax reimbursement issue raised by Appellant. *See* Petition at 1-2. This Court of course acted entirely within its discretion in expressly declining to reach this issue and remanding it to the agency. Indeed, on this point, the petition does not even purport to raise an issue "overlooked or misapprehended," as Rule 27 requires. Accordingly, the petition should be denied on this basis.

Second, the petition argues that this Court's opinion misstated the test governing the countability of assets in stating that "the entire principal of the trust will be deemed available" if the trust grants "even a 'peppercorn' of discretion for the trustee to pay the grantor from the principal of the trust under any circumstance." The Appellee does not view this sentence as carrying the implication to which the petition objects. Furthermore, the issue the petition seems to be raising – the extent to which all of a countable asset may be deemed available if a trustee has discretion to distribute a portion of it – was neither briefed nor argued in this matter.

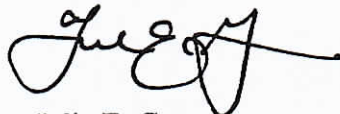


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Third, the petition extensively briefs an issue that, as the petition states, was “unbriefed” in this matter, concerning the power of appointment to a charitable or non-profit organization. Petition at 3. This Court’s opinion remanded the issue to the agency for consideration. Remand was entirely appropriate because resolution of this issue requires analysis of the specific terms of the trust at issue in this case. The Court was correct to remand the issue because the agency is in the best position to evaluate this issue in the first instance, subject to judicial review.

Thank you for your consideration of this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Julie E. Green', with a long horizontal flourish extending to the right.

Julie E. Green
Assistant Attorney General

Cc: Brian E. Barreira, Esq.
Nicholas G. Kaltsas, Esq.