

The POMS Problem

Deference, distribution decisions, and the reality of special needs trust administration.

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A question about travel



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It started with a narrow question. . .

- The question: May a first-party supplemental needs trust reimburse family members who travel to visit a minor beneficiary, when maintaining contact is beneficial to the beneficiary?
- The tension: *During a recent Stetson presentation, an SSA representative said that language in an SNT which provides for payment for 'others' to visit the beneficiary would be denied and rejected, as the agency took the position that such payment was benefiting others instead of the beneficiary.*
- The practical effect: some practitioners revised trust language to avoid or limit provisions authorizing family visits

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The factual scenario

THE RECORD

- First-party supplemental needs trust
- Minor beneficiary with a disability
- Family travels to provide companionship and emotional support
- The trustee believes maintaining contact benefits the beneficiary
- Trust authorizes distributions for companionship and well being

THE QUESTION

May the trust reimburse the family member's travel expenses without violating the sole-benefit rule?

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POMS' internal tension

A paid stranger: yes.
A sibling's plane ticket: no.



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POMS Provision #1: Sole Benefit Rule

SI 01120.201F.1
General Rule

“Consider a trust established for the sole benefit of an individual if the trust benefits **no one but that individual**, whether at the time the trust is established or at any time for the remainder of the individual’s life.”

SI 01120.201F.3
Explanation of Rule For Third Party Payments

“The key to evaluating this provision is that, when the trust makes a payment to a third party for goods or services, the goods or services must be for the **primary benefit** of the trust beneficiary”

Reimbursable: “an Alzheimer’s patient cannot be left alone and requires a sitter . . . Family members may normally do some of these things without compensation, but that does not prohibit the trust from paying for these services.”

Not reimbursable: “trust purchase[s] a car for the beneficiary’s grandchild to take the beneficiary to their doctor’s appointments twice a month, but the grandchild [is] also driving it to work every day.”

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POMS Provision #2: Travel Expenses

POMS SI 01120.201F.3.c
Payment of third-party travel expenses to visit a beneficiary to ensure the safety or medical well-being of the trust beneficiary . . . A third party can be a family member.
Allowed travel category #1

“Travel for a service provider to oversee the beneficiary’s living arrangements when the beneficiary resides in an institution, nursing home, or other long-term care facility (for example, group homes and assisted living facilities), or other supported living arrangements.”

Allowed travel category #2

“Travel for a trustee, trust advisor named in the trust, or successor to exercise their fiduciary duties or to ensure the well-being of the beneficiary when the beneficiary does not reside in an institution.”

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On the one hand...

F.3.a. allows a trustee to pay a family member to be a companion, and to pay the companion’s museum admission.

On the other...

F.3.c. disallows reimbursement to the same family member for a plane ticket to provide companionship, unless the visit concerns the beneficiary’s “safety or medical well-being.”

Query: What if it was an exclusive museum event in the first example, and a short flight in the second, such that the museum ticket cost more than the flight?

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Should POMS control?

Landsman's answer in light of Loper Bright



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Landsman reframes the question

THE USUAL QUESTION

What does POMS allow?

THE ISSUE

This question treats a benefits-administration manual as the source of fiduciary obligation and leaves the trustee and beneficiary at the mercy of case worker interpretation.

LANDSMAN'S QUESTION:

Should POMS define a trustee's duties at all?

LANDSMAN'S ANSWER

"Sole benefit" is a trust-law question first

Sub-regulatory guidance should *inform*, not *replace*, trust law – thus, agency readings should not be granted controlling deference

Agency readings earn persuasive weight when they are (1) thorough; (2) consistent with other agency actions;(3) reflect a procedural formality synonymous with careful consideration; (4) possess expertise; and (5) provide valid and persuasive reasoning (i.e. "*Skidmore* weight").

Landsman concludes that the agencies' interpretations fail several of these factors as federal welfare officials have no expertise in state trust law, they employ inconsistent reasoning, and they lack persuasive justification

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Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024)

What it held

- Chevron is overruled
- Courts must decide the best reading of a statute themselves
- Agency interpretations get weight only to the extent they persuade (*Skidmore*)

Why it matters here

- POMS was never entitled to Chevron deference; it's a manual, not a regulation
- Some courts gave the POMS Chevron-style deference
- Loper Bright removes the basis for that approach

Bottom line

In court, POMS must earn its weight. But in practice, SSA offices still treat it as the rulebook.

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What *Loper Bright* does for our argument (and Landsman's)

- POMS is sub-regulatory guidance. It is not enacted law, and it never was.
- A trustee's duties arise from the instrument and state trust law — not from an agency manual.
- Courts now determine the meaning of "sole benefit" for themselves.
- The question is what the statute, the trust, and fiduciary duty require. Not what the manual permits.

Loper Bright places courts in the role Landsman envisioned: trust law as the primary guide, POMS as persuasive authority.

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Congress relied on state trust law...

"There is no reason to believe [Congress] abrogated States' general laws of trusts or their inherent powers under those laws... [and] we reject the conclusion that application of these traditional powers is contrary to the will of Congress. After all, Congress did not pass a federal body of trust law, estate law, or property law when enacting Medicaid. It relied and continues to rely on state laws governing such issues." ***Lewis v. Alexander*, 685 F.3d 325, 340 (3d Cir. 2012).**

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The New York experience

Administrative practice based on New York's statute and recent case law



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New York's Framework: Discretion Built In

The statute (EPTL 7-1.12)

Enacted in 1993 to codify *Matter of Escher*: an SNT is a discretionary trust

The trust may authorize a distribution that reduces or eliminates benefits, if the beneficiary is better off as a result

Benefits eligibility is a factor in the decision, not a limit on it

The practice

Inconsistent decisions, with heavy reliance on agency personnel

A generalized "best interests" inquiry substituted for fiduciary review

Trustees could not predict the standard their conduct would be judged by

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Matter of Ellen H., 82 Misc. 3d 1207(A), (Sup. Ct. Broome Cnty. 2024)

Facts	Holding
- Former trustee/guardian failed to maintain accurate accountings and made numerous undocumented expenditures from a first-party SNT. - Questioned expenditures included personal loans, vehicle expenses, RV costs, home improvements, vacations, and cash withdrawals unrelated to the beneficiary.	- Court found the trustee breached her fiduciary duties, abused her discretion, and failed to prove expenditures were for the beneficiary's primary benefit. - Trustee was surcharged \$450,000 for unsupported and imprudent administration. - References POMS, but decides the case on fiduciary grounds

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Ellen H. Methodology for Trustee-Decision Making

The Court undertook a three-part analysis (abuse of discretion standard):

1. Was the distribution made for the beneficiary's primary benefit?
2. Could the expense have been paid through an available governmental benefit program?
3. If so, did the trustee reasonably conclude the trust expenditure better served the beneficiary's needs?

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Putting it together

Drafting, documenting, defending.



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Protocol for the trustee

- Communicate.** Ask the beneficiary, the family, and the care team what the expenditure is actually for
- Investigate.** Check whether a benefit program covers it, and price the alternatives
- Consider.** Read the instrument's language before reading the manual's
- Consult the guidance.** Note what POMS says, including possible inconsistencies
- Decide, and say why.** One paragraph of reasoning, contemporaneous, in the file
- Prove delivery.** Invoices, receipts, and a record that the goods or services reached the beneficiary
- Never self-deal.** Nothing survives a self-interested distribution; if any question, get court approval
- Account.** Annual, accurate, and reconcilable to the penny

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Documenting the file

REQUEST	Reimburse \$1,180 — mother's travel to visit beneficiary, age 14, in a group home four hours away.
TRUST AUTHORITY	Article IV(b) authorizes payments for companionship and well being.
PRIMARY BENEFIT	Care plan and clinician note tie regular family contact to the beneficiary's treatment goals; travel is the incidental cost of that contact.
PUBLIC BENEFITS	No program funding covers family visitation; confirmed with the care coordinator, March 14, 2026.
GUIDANCE CONSIDERED	SI 01120.201F.3.a. and F.3.c. read together — the primary-benefit analysis alongside the travel provisions.
DECISION	Approved at actual coach cost; receipts required, no per diem. Reasoning recorded this date.

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Draft for discretion, counsel for process, proceed to settlement

DRAFTING

Subject to state specific guidance/limitations:

- Grant broad discretion
- Allow distributions that impact benefits if it puts the beneficiary in a better position
- Include limited modification and amendment power in order to protect benefit eligibility after SSA review

COUNSELING THE TRUSTEE CLIENT

- Continue to counsel as you would any trustee client: the traditional rules of fiduciary conduct still apply
- In the exercise of discretion, establish a system for regular analysis of benefit program eligibility and program availability
- Consider administrative guidance as informative, not dispositive
- Settle your accounts regularly if trust activity is significant, periodically if it is not

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POMS informs.
Fiduciary law governs.

Protecting the beneficiary and protecting the trustee are the same project — and neither is achieved by rigid adherence to an agency manual.

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