****

The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

****

PAMELA D. CORCORAN *v.* DEPARTMENT OF SOCIAL SERVICES
(SC 16955)

Sullivan, C. J., and Borden, Katz, Vertefeuille and Zarella, Js.

Argued January 9—officially released November 9, 2004

Charles D. Ray, with whom were *K. Bradoc Gallant*

and, on the brief, *Ingrid L. Moll*, for the appellant (plaintiff).

Hugh Barber, assistant attorney general, with whom, on the brief, were *Richard Blumenthal*, attorney general, and *Richard J. Lynch*, assistant attorney general, for the appellee (defendant).

Opinion

VERTEFEUILLE, J. The plaintiff, Pamela D. Corcoran, appeals from the trial court's judgment dismissing her appeal from the decision of the defendant, the department of social services (department), to discontinue her medicaid benefits because her assets, in the form of a testamentary trust, exceeded the prescribed limits. The plaintiff claims that the trial court, by incorrectly concluding that the department's administrative hearing officer properly excluded an earlier order of the Probate Court construing the trust, improperly dismissed her administrative appeal. Specifically, the plaintiff claims that, pursuant to the doctrine of collateral estoppel, the administrative hearing officer should have admitted and given preclusive effect to the Probate Court's previous construction of the trust. In the alternative, the plaintiff claims that the trial court: (1) improperly affirmed the hearing officer's conclusion that the assets of the testamentary trust were available to the plaintiff; and (2) improperly affirmed the hearing officer's decision to exclude extrinsic evidence of the testator's intent. We conclude that the trial court properly concluded that: (1) the hearing officer was not collaterally estopped from construing the trust; (2) the hearing officer correctly determined that the trust was an asset available to the plaintiff; and (3) the hearing officer did not abuse her discretion in excluding extrinsic evidence offered to prove the testator's intent. Accordingly, we affirm the judgment of the trial court.

This appeal involves two separate proceedings, a Probate Court hearing and an administrative hearing before a department hearing officer, related to the construction of a trust created by Lyman M. Corcoran (testator), in his will of November 3, 1987, for the benefit of the plaintiff, his daughter. The testator's will provided that, upon his death, his residuary estate should be divided equally among his three daughters, Robin C. Turek, Imogen J.C. Kellogg and the plaintiff. Pursuant to the will, Turek and Kellogg each would receive their one-third share directly, while the remaining one-third was to be held in trust for the plaintiff, who is mentally disabled.[1]

The testamentary language creating the trust provided that "[i]f my daughter [the plaintiff] is then living, the trust established for her shall be retained by my trustees to hold, manage, invest and reinvest said share as a Trust Fund, paying to or expending for the benefit of [the plaintiff] so much of the net income and principal

of said Trust as the Trustees, in their sole discretion, shall deem proper for her health, support in reasonable comfort, best interests and welfare . . . .'' Additionally, the will provided that ''[a]mong the circumstances and factors to be considered by the trustee in determining whether to make discretionary distributions of net income or principal to a beneficiary are the other income and assets known to the trustee to be available to that beneficiary and the advisability of supplementing such income or assets.''

The testator died on May 29, 1989. Thereafter, the Probate Court appointed the plaintiff's sisters as trustees of the trust, which they funded in 1992. From the time the trust was funded until December 31, 2000, the trust receipts totaled $854,307.95. During the same period of time, the plaintiff received $150 from the trust.[2]

Following the testator's death,[3] the department granted the plaintiff's application for financial and medical assistance under the state administered medicaid program (medicaid benefits).[4] As of February, 2001, the plaintiff's monthly income included $19 from Supplementary Social Security Income (SSI), $531 from Social Security and $175.46 from employment. Upon learning that the plaintiff was the beneficiary of the trust created by the testator, the department notified the plaintiff, by a letter dated February 26, 2001, that it was discontinuing her medicaid benefits because her assets, including the trust, exceeded the relevant asset limits.[5] At the plaintiff's request, an administrative hearing was scheduled for April 26, 2001, to review the department's decision to terminate her medicaid benefits.

Shortly before the department notified the plaintiff of its intention to discontinue her medicaid benefits,[6] the trustees petitioned the Probate Court, pursuant to General Statutes § 45a-98 (a) (4),[7] to construe the terms of the trust ''as they pertain to any rights the State . . . may have to claim reimbursement from the Trust for benefits heretofore provided . . . and/or for any such benefits provided by the State to the [plaintiff] in the future.''[8] Specifically, the trustees asked the Probate Court to issue ''a ruling classifying said Trust as a 'special needs' trust, from which it is neither appropriate nor required to reimburse said State for benefits received by [the plaintiff] . . . .'' The Probate Court scheduled a hearing for May 4, 2001.

Prior to the Probate Court's hearing, the department conducted the scheduled administrative hearing to determine whether the department properly discontinued the plaintiff's medicaid benefits. Before the hearing officer, counsel for the department argued that the department properly had characterized the trust as a general support trust, the assets of which were available to the plaintiff, and properly had discontinued the plaintiff's medicaid benefits because of excess assets. The

plaintiff's counsel contended that the trust was more properly characterized as a supplemental needs trust from which the plaintiff could not compel distributions, and counsel asked the hearing officer to delay ruling on the issue until the construction action pending before the Probate Court was resolved. Because the plaintiff was not present at the hearing, however, the hearing officer requested that the plaintiff's counsel either produce the plaintiff or provide medical evidence explaining her absence. Thereafter, the hearing officer suspended the proceedings until such medical evidence was provided or the plaintiff appeared before her.

The department subsequently notified the Probate Court of the pending administrative proceedings and urged the court not to proceed with the hearing scheduled for May 4, 2001. The department premised this request on the fact that it already had litigated this ''exact issue,'' namely, the proper construction of the trust, before the hearing officer and should not be forced to defend its actions in two separate forums.

Over the department's objection, the Probate Court conducted the scheduled hearing.[9] In an order dated June 12, 2001, the court determined that the testator intended the ''trust at issue . . . to be . . . a 'special needs, discretionary trust' not otherwise available to the state . . . .'' The Probate Court also stated: ''Although [this] court lacks the power to order any department of the state . . . to reinstate benefits to a party before this court, it respectfully requests that the state do so in this case . . . .''[10]

Before the Probate Court issued its order, the administrative hearing reconvened with the plaintiff in attendance on May 31, 2001. At the conclusion of the hearing, the hearing officer, at the department's request, agreed to keep the hearing record open until June 8, 2001, to allow the department time to submit a rebuttal and comments. On July 12, 2001, the hearing officer issued a ruling on the hearing record, indicating that she had closed the record on June 8, 2001, four days prior to the issuance of the Probate Court's decision on June 12, 2001. Thereafter, on July 17, 2001, the hearing officer issued a decision upholding the department's decision to discontinue the plaintiff's medicaid benefits because the trust was an asset that was available to her and, therefore, her assets exceeded the regulatory limits.[11]

The plaintiff subsequently requested reconsideration of the decision pursuant to General Statutes § 4-181a (a) (1) (a).[12] Specifically, the plaintiff claimed that the department should reconsider both the ruling closing the record on June 8, 2001, and the resulting decision in light of the Probate Court's order of June 12, 2001. Her motion was denied.[13] Pursuant to General Statutes §§ 17b-61[14] and 4-183,[15] the plaintiff appealed from the hearing officer's decision to the Superior Court.

In a four count complaint, the plaintiff alleged that the department: (1) improperly applied Connecticut law regarding availability of assets; (2) made factual findings that were clearly erroneous in light of the substantial evidence in the record as a whole; (3) exceeded its statutory authority by improperly excluding the Probate Court's decision; and (4) resolved the issue in a manner contrary to federal law. The trial court rendered judgment dismissing the plaintiff's appeal, concluding that the hearing officer properly determined that the plaintiff was the beneficiary of a general support trust. Additionally, the trial court determined that the hearing officer's decision to exclude the Probate Court's order was not improper. The trial court based this determination on its conclusion that the ''findings by the Probate Court do not resolve whether under the statute and regulations administered by the department, the trust is an inaccessible asset.''

The plaintiff appealed from the trial court's judgment of dismissal to the Appellate Court. Thereafter, we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

I

On appeal, the plaintiff first claims that the trial court incorrectly concluded that the hearing officer properly refused to consider and give preclusive effect to the order of the Probate Court under the doctrine of collateral estoppel. Specifically, the plaintiff claims that the issue of whether the trust is a supplemental needs trust or a general support trust was litigated fully and fairly in the Probate Court action, which the hearing officer failed to consider. The department responds that the hearing officer did not abuse her discretion in closing the hearing record prior to the issuance of the Probate Court's decision, and further, that the ultimate issue decided by the hearing officer, i.e., whether the trust constituted an asset that was available to the plaintiff, was not identical to the issue decided by the Probate Court and, therefore, the hearing officer was not estopped from construing the trust. We agree with the department that the hearing officer did not abuse her discretion in closing the record and that the issue presented to, and decided by, each tribunal was not identical. The hearing officer, therefore, was not bound by the principles of collateral estoppel.[16]

We begin by setting forth the applicable standard of review. The plaintiff's claim requires us to determine whether the trial court properly declined to invoke the doctrine of collateral estoppel to preclude the hearing officer from construing the trust. This presents a question of law over which our review is plenary. *R & R Pool & Patio, Inc.* v. *Zoning Board of Appeals*, 257 Conn. 456, 466, 778 A.2d 61 (2001) (propriety of application of collateral estoppel is question of law).

The hearing officer closed the record four days before the Probate Court issued its ruling, and in an exercise of her discretion, she declined to consider any further submissions. Our scope of judicial review is limited to determining if the hearing officer ''acted unreasonably, arbitrarily or illegally, or abused [her] discretion.'' (Internal quotation marks omitted.) *Cannata* v. *Dept. of Environmental Protection*, 239 Conn. 124, 139, 680 A.2d 1329 (1996). We cannot say that the hearing officer's decision to close the record was an abuse of discretion, and accordingly, the ruling of the Probate Court was not part of the record in this case. Moreover, the issues decided by the hearing officer and the Probate Court were not identical, and collateral estoppel therefore does not apply.

''The fundamental principles underlying the doctrine of collateral estoppel are well established. The common-law doctrine of collateral estoppel, or issue preclusion, embodies a judicial policy in favor of judicial economy, the stability of former judgments and finality. . . . Collateral estoppel means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit. . . . Issue preclusion arises when an issue is actually litigated and determined by a valid and final judgment, and that determination is essential to the judgment. . . . Collateral estoppel express[es] no more than the fundamental principle that once a matter has been fully and fairly litigated, and finally decided, it comes to rest.'' (Internal quotation marks omitted.) *Cumberland Farms, Inc.* v. *Groton*, 262 Conn. 45, 58, 808 A.2d 1107 (2002).

''Before collateral estoppel applies [however] there must be an *identity of issues* between the prior and subsequent proceedings. To invoke collateral estoppel the issues sought to be litigated in the new proceeding must be *identical* to those considered in the prior proceeding.'' (Emphasis added.) *Crochiere* v. *Board of Education*, 227 Conn. 333, 345, 630 A.2d 1027 (1993); see also *Mazziotti* v. *Allstate Ins. Co.*, 240 Conn. 799, 813, 695 A.2d 1010 (1997) (''[t]he present case presents a question of issue preclusion, which requires an identity of those issues between the prior and subsequent proceedings''); *Aetna Casualty & Surety Co.* v. *Jones*, 220 Conn. 285, 297, 596 A.2d 414 (1991) (''[i]n order for collateral estoppel to bar the relitigation of an issue in a later proceeding, the issue concerning which relitigation is sought to be estopped must be identical to the issue decided in the prior proceeding''). In other words, ''[i]n order for collateral estoppel to apply . . . there must be an *identity* of the issues, that is, the prior litigation must have resolved the *same* legal or factual issue that is present in the second litigation.'' (Emphasis added; internal quotation marks omitted.) *Connecticut*

National Bank v. *Rytman*, 241 Conn. 24, 38, 694 A.2d 1246 (1997). Simply put, ''collateral estoppel has no application in the absence of an identical issue.'' *Gladysz* v. *Planning & Zoning Commission*, 256 Conn. 249, 261, 773 A.2d 300 (2001).

Turning to the facts of the present case, we conclude that, because the issue decided by the Probate Court, namely, that the trust was not available to the plaintiff's *creditors*, is not identical to the issue before the hearing officer, namely, whether the trust constituted an asset available to the *plaintiff*, the hearing officer was not collaterally estopped from construing the trust. Our conclusion is supported by a review of the proceedings before each tribunal.

Although the proceedings before the Probate Court and the hearing officer arose out of the same testamentary instrument, each tribunal was called upon to decide, and did in fact decide, a different issue. The trustees petitioned the Probate Court ''to construe the terms of said Trust as they pertain to any rights the State . . . may have to claim *reimbursement* from the Trust for benefits heretofore provided . . . .'' (Emphasis added.) Specifically, the trustees requested ''a ruling classifying said Trust as a '*special needs*' trust, from which it is neither appropriate nor required to *reimburse said State* for benefits received . . . .'' (Emphasis added.) In response to this petition, the Probate Court determined that the testator intended to create a '' 'special needs, discretionary trust,' not otherwise *available to the state . . . or other creditors of the trust beneficiary* for her care and support'' and, further, that ''[t]he trust assets are not available to the claims of the state . . . for past or future care . . . .''[17] (Emphasis added.)

The hearing officer, however, conducted the administrative hearing, at the plaintiff's request, to determine whether the department properly discontinued the plaintiff's medicaid benefits. In concluding that the termination was proper, the hearing officer determined that the trust was an ''asset available to the *plaintiff*'' under the regulations and policies of the department. (Emphasis added.)

We acknowledge that there was some area of overlap in the issues presented in the two proceedings. As we previously have noted, however, the linchpin of collateral estoppel is the identity of the issues decided by both tribunals, and, in the present case, we are not persuaded that the issues are identical. The Probate Court determined, in the context of a potential reimbursement claim, that the trust was not available to the plaintiff's creditors and the state, whereas the hearing officer determined that the trust was an asset available to the plaintiff that disqualified her from receiving medicaid benefits. The Probate Court's opinion is notable for what it did not conclude, namely, whether the plain-

tiff had a legal right to compel distribution from the trust. As we discuss more fully in part II of this opinion, for the purposes of determining eligibility for the medicaid program, ''only assets *actually available to a medical assistance recipient* may be considered . . . .'' (Emphasis altered.) *Zeoli* v. *Commissioner of Social Services*, 179 Conn. 83, 94, 425 A.2d 553 (1979). Assets held in trust are considered available if the beneficiary has the legal right to compel distributions. See General Statutes § 17b-261 (c). Therefore, although the Probate Court determined that the trust is not available to the *state* as a potential creditor, it did not consider whether the trust is available to the plaintiff as a matter of law. As the trial court aptly noted, ''[t]hese findings by the Probate Court do not resolve whether under the statutes and regulations administered by the department the trust is an inaccessible asset'' as to the plaintiff. In other words, the hearing officer was not estopped from construing the trust in relation to the plaintiff's rights because the Probate Court's decision did not address the plaintiff's rights to the trust. We therefore conclude that the trial court properly determined that the hearing officer was not collaterally estopped from construing the trust.

The plaintiff maintains that the hearing officer was estopped from relitigating the proper characterization of the trust because the identical issue, the availability of the trust to the plaintiff, was ''necessarily determined'' by the Probate Court's decision. We disagree.

Even if we were to assume, for the purpose of argument, that the issue presented to the Probate Court was the same as the issue before the hearing officer, that issue, i.e., the availability of the trust to the plaintiff, was not necessarily determined by the Probate Court. We note that the Probate Court classified the trust at issue as a ''special needs, discretionary trust . . . .'' We are unable, from this characterization, to determine what the Probate Court intended to conclude regarding the availability of the trust to the plaintiff. A special needs trust is defined by 42 U.S.C. § 1396p (d) (4) (A) as follows: ''A trust containing the assets of an individual under age 65 who is disabled . . . and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court *if the State will receive all amounts remaining in the trust upon the death of such individual* up to an amount equal to the total medical assistance paid on behalf of the individual . . . .'' (Emphasis added.) In the present case, the trust in question cannot be a special needs trust because upon the plaintiff's death, the trustees will become the trust's beneficiaries. Furthermore, the phrase ''discretionary trust'' is ambiguous. This court previously has used this phrase to describe trusts in which the settlor is also the beneficiary; *Forsyth* v. *Rowe*, 226 Conn. 818, 829, 629 A.2d 379 (1993); *Greenwich Trust Co.* v. *Tyson*, 129 Conn. 211, 222, 27 A.2d

166 (1942); as well as trusts in which the trustee has discretion to make distributions or to accumulate income. See, e.g., *Bridgeport* v. *Reilly*, 133 Conn. 31, 39, 47 A.2d 865 (1946) (''a trustee, in determining whether to make expenditures under a discretionary trust for support, is entitled to take into consideration other means of support available to the beneficiary''). This phrase alone, however, does not indicate the precise level of discretion conferred upon the trustee, the determination of which, in this case, is essential to identifying the availability of the trust's funds to the plaintiff. Accordingly, we cannot conclude that the Probate Court's characterization of the trust as a ''special needs, discretionary trust'' necessarily determined the issue in the present case, namely, whether the trust was an asset available to the plaintiff.

Moreover, we note that previous decisions by this court, and their underlying public policy, counsel against the plaintiff's interpretation. This court previously has recognized ''that the application of the collateral estoppel doctrine has dramatic consequences for the party against whom the doctrine is applied. [Therefore] [c]ourts should be careful that the effect of the doctrine does not work an injustice. In applying the doctrine, the court must specifically determine that an issue that is presented in the second case was necessary to the judgment in the first case . . . and that the broader purposes of the doctrine are satisfied.'' (Citation omitted.) *Gladysz* v. *Planning & Zoning Commission*, supra, 256 Conn. 261–62. ''Thus, [t]he doctrines of preclusion . . . should be flexible and must give way when their mechanical application would frustrate other social policies based on values equally or more important than the convenience afforded by finality in legal controversies.'' (Internal quotation marks omitted.) *Cumberland Farms, Inc.* v. *Groton*, supra, 262 Conn. 59–60.

Because we have recognized that applying the doctrine of collateral estoppel has harsh consequences, namely, cutting off a party's right to future litigation on a given issue, we have been reluctant to uphold the invocation of the doctrine unless the issues are completely identical. See, e.g., *Rocco* v. *Garrison*, 268 Conn. 541, 556, 848 A.2d 352 (2004) (declining to apply doctrine because issues presented were not identical); *Cumberland Farms, Inc.* v. *Groton*, supra, 262 Conn. 62 (declining to apply doctrine due to deferential standard of review in initial proceeding); *R & R Pool & Patio, Inc.* v. *Zoning Board of Appeals*, supra, 257 Conn. 464–65 (Appellate Court improperly concluded that parties were estopped from litigating definition of ''fine furniture'' in cease and desist action because it was necessarily determined in previous proceeding); *Gladysz* v. *Planning & Zoning Commission*, supra, 256 Conn. 261 (issues not sufficiently identical for collateral estoppel to serve as bar); *Nancy G.* v. *Dept. of Chil-*

dren & Families, 248 Conn. 672, 682, 733 A.2d 136 (1999) (declining to apply collateral estoppel based on inference to be drawn from initial proceeding); *Connecticut National Bank* v. *Rytman*, supra, 241 Conn. 40 (issues not sufficiently identical to warrant issue preclusion); *Crochiere* v. *Board of Education*, supra, 227 Conn. 344–46 (finding in employment termination proceeding does not preclude future litigation on issue of wilful misconduct under doctrine of collateral estoppel).

In the present case, if we were to accept the plaintiff's claim, as adopted by the dissent, we would be premising the application of the doctrine of collateral estoppel on a mere inference. As we previously have discussed, the issues were not, on their face, identical. The plaintiff argues, and the dissent agrees, however, that by resolving the issue of creditors' rights, the Probate Court necessarily determined the rights of the plaintiff. This claim is premised on the unproven, implicit assertion that a creditor enjoys the same rights to a trust as a beneficiary. In other words, the plaintiff asks us to infer the rights of the plaintiff from the Probate Court's decision regarding the rights of creditors. We are unwilling to do so. In this case, the addition of an inferential step is sufficient to negate the required identity of the issues. See, e.g., *Nancy G.* v. *Dept. of Children & Families*, supra, 248 Conn. 682 (declining to infer from adoption order that child had been ''placed'' within meaning of statute for collateral estoppel purposes); *Crochiere* v. *Board of Education*, supra, 227 Conn. 344–46 (issue of wilful misconduct was not necessarily determined by termination hearing).[18]

Contrary to the conclusion reached by the dissent, the rights of the beneficiary and a creditor of the beneficiary are not in lockstep. It is true that ''[a] transferee or creditor of a trust beneficiary cannot compel the trustee to make discretionary distributions if the beneficiary personally could not do so.'' 2 Restatement (Third), Trusts § 60, comment (e), p. 409 (2003). Thus, if the beneficiary does not have a right to access freely the assets of the trust, a creditor is likewise precluded from reaching those assets. The converse, however, does not necessarily follow. The right of a creditor to reach the trust is not determinative of the right of the beneficiary to do so. It is possible for a trustee to be ordered to make payment to the beneficiary even when the creditor cannot similarly force payment from the trust. ''[A] trustee's refusal to make distributions might not constitute an abuse [of discretion] as against an assignee or creditor even when, under the standards applicable to the power, a decision to refuse distributions to the beneficiary might have constituted an abuse in the absence of the assignment or attachment. This is because the extent to which the designated beneficiary might actually benefit from a distribution is relevant to the justification and reasonableness of the trustee's

decision in relation to the settlor's purposes and the effects on other beneficiaries.'' Id. This court considers the rights of a trust beneficiary to be distinct from the rights of the beneficiary's creditor. In *Bridgeport-City Trust Co.* v. *Beach*, 119 Conn. 131, 139–41, 174 A. 308 (1934), this court considered as separate questions the beneficiary's right to access the principal of a support trust and a creditor's ability to reach the beneficiary's trust income.

This court's decision in *Zeoli* further undermines the dissenting opinion's conclusion that ''[a] creditor's rights to reach the assets of a trust are coextensive with a beneficiary's right to reach those assets . . . .'' In *Zeoli*, this court undertook a two part analysis. *Zeoli* v. *Commissioner of Social Services*, supra, 179 Conn. 86. First the court analyzed the right of a creditor to reach the assets held in trust for the beneficiaries. Id., 88. Second, after determining that a creditor could *not* access the trust funds, the court nevertheless went on to consider whether funds were available to the beneficiaries. Id., 91. The fact that this court independently analyzed both the rights of a creditor and the rights of the beneficiaries strongly suggests that their rights are not, as the dissenting opinion claims, coextensive. Were the dissent correct, it would have been wholly unnecessary for this court to analyze separately the beneficiaries' right to the trust assets after the court first determined that a creditor could not reach those assets.

In addition, the doctrine of collateral estoppel is based on notions of judicial economy, such that ''where a party has fully and fairly litigated his claims, he may be barred from future actions on matters not raised in the prior proceeding. But the scope of matters precluded necessarily depends on what has occurred in the former adjudication.'' (Internal quotation marks omitted.) *Isaac* v. *Truck Service, Inc.*, 253 Conn. 416, 423, 752 A.2d 509 (2000). The application of collateral estoppel ''should be flexible and must give way when [its] mechanical application would frustrate other social policies based on values equally or more important than the convenience afforded by finality in legal controversies.'' (Internal quotation marks omitted.) Id. In the present case, where the two decisions were reached nearly simultaneously, there is no strong reason to afford one precedence over the other. Thus, under the circumstances of the present case, giving precedence to the decision of the Probate Court would be an unwarranted and inflexible application of the doctrine of collateral estoppel.

II

The plaintiff next claims that the trial court improperly affirmed the hearing officer's conclusion that the trust was an asset available to the plaintiff as defined by relevant medicaid regulations. Specifically, the plaintiff claims that the testator intended to create a discretion-

ary, supplemental needs trust, the assets of which should not be considered available for medicaid purposes. The department, however, contends that the testamentary language indicates that the testator intended the trust to provide for the plaintiff's general support, in which case it would constitute an asset available to the plaintiff. We agree with the department that the testator intended to create a general support trust and, therefore, we further agree that the trust corpus and income properly may be considered to be available to the plaintiff for the purpose of determining medicaid eligibility.

We begin by setting forth our applicable standard of review. Resolution of this issue requires us to determine whether the hearing officer properly construed the terms of the trust instrument. ''The construction of a will presents a question of law . . . .'' (Internal quotation marks omitted.) *Cannan National Bank* v. *Peters*, 217 Conn. 330, 335, 586 A.2d 562 (1991). As we previously have stated, ''[w]ith respect to questions of law, [w]e have said that [c]onclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts.'' (Internal quotation marks omitted.) *Board of Education* v. *Commission on Human Rights & Opportunities*, 266 Conn. 492, 504, 717 A.2d 1276 (2003).

This court has stated that, ''[u]nder applicable federal law, only assets *actually available to a medical assistance recipient* may be considered by the state in determining eligibility for public assistance programs such as title XIX [medicaid]. . . . A state may not, in administering the eligibility requirements of its public assistance program pursuant to title XIX . . . presume the availability of assets not actually available . . . .'' (Citations omitted; emphasis altered.) *Zeoli* v. *Commissioner of Social Services*, supra, 179 Conn. 94. This principle ''has served primarily to prevent the States from conjuring fictional sources of income and resources or imputing financial support from persons who have no obligation to furnish it or by overvaluing assets in a manner that attributes nonexistent resources to recipients.'' *Heckler* v. *Turner*, 470 U.S. 184, 200, 105 S. Ct. 1138, 84 L. Ed. 2d 138 (1985).

''For the purposes of determining eligibility for the [m]edicaid program, an available asset is one that is actually available to the applicant or one that the applicant has the legal right, authority or power to obtain or to have applied for the applicant's general or medical support. If the terms of a trust provide for the support of an applicant, the refusal of a trustee to make a distribution from the trust does not render the trust an unavailable asset.'' General Statutes § 17b-261 (c). For medicaid purposes, general support trusts are consid-

ered available because a beneficiary can compel distribution of the trust income. See General Statutes § 52-321.[19] In other words, the beneficiary has a ''legal right . . . to obtain'' the funds. See General Statutes § 17b-261 (c). Conversely, supplemental needs trusts, in which a trustee retains unfettered discretion to withhold the income, are not considered available to the beneficiary. *Connecticut Bank & Trust Co.* v. *Hurlbutt*, 157 Conn. 315, 327, 254 A.2d 460 (1968) (spendthrift trust not open to alienation or assignment by anyone until income paid over to beneficiary); *Bridgeport-City Trust Co.* v. *Beach*, supra, 119 Conn. 141 (beneficiary may not alienate or assign interest of spendthrift trust).

''It is well settled that in the construction of a testamentary trust, the expressed intent of the testator must control. This intent is to be determined from reading the instrument as a whole in the light of the circumstances surrounding the testator when the instrument was executed, including the condition of his estate, his relations to his family and beneficiaries and their situation and condition.'' *Gimbel* v. *Bernard F. & Alva B. Gimbel Foundation, Inc.*, 166 Conn. 21, 26, 347 A.2d 81 (1974). Therefore, in determining whether the assets of a testamentary trust are available to a beneficiary, this court considers whether the testator intended to create a supplemental needs trust or a general support trust. See *Zeoli* v. *Commissioner of Social Services*, supra, 179 Conn. 91–92.

The leading case in this state on trust construction in relation to medicaid eligibility is *Zeoli*. In that case, the plaintiffs, two mentally disabled sisters, appealed from the department of social services' decision to terminate their medicaid benefits for having excess assets in the form of a testamentary trust devised to them by their father. Id., 84–85. The language of the bequest granted the trustee ''absolute and uncontrolled discretion'' to make distributions to either daughter, ''regardless of whether any one of my daughters may be totally deprived of any benefit hereunder.'' (Internal quotation marks omitted.) Id., 86–87 n.2. The trust instrument further provided that ''[w]ithout in any way limiting the absolute discretion of my Trustee, it is my fond hope that my trustee pay or apply the net income or principal of the trust for the maintenance, support, education, health and general welfare of . . . my daughters . . . .'' (Internal quotation marks omitted.) Id. This court, after analyzing the testamentary language, concluded that ''the testator's intent was to provide the trustee with sufficient flexibility to use the funds under the trust solely for supplemental support.'' Id., 90. Therefore, ''[s]ince the assets held in the spendthrift trust were not intended for the plaintiffs' general support, they could not compel their distribution'' and the trust corpus and income could not be considered available. Id., 92.

Although the factual posture of the present case is similar to *Zeoli*, notably, the testamentary language reflective of the testators' intent is not. In the present case, the trust instrument manifests the testator's unambiguous intent to create a general support trust whereas the *Zeoli* trust unequivocally indicated the testator's intent to provide for the beneficiaries' supplemental needs. In *Zeoli*, the trust instrument was replete with references to the ''absolute and uncontrolled discretion'' afforded the trustees in their decision-making process. See id., 86–87 n.2. In addition to the overt references to the unfettered discretion of the trustees, the court in *Zeoli* deemed the provision authorizing the trustee to discriminate among the beneficiaries when making distributions highly probative of the vast level of discretion the testator intended to confer on the trustee. See id., 90. In the present case, however, the testator granted the trustees ''sole discretion'' to make distributions and provided them with factors to consider when making ''discretionary distributions . . . .''[20] This language is not as strong as that used in *Zeoli* and suggests that the testator in the present case intended to confer a lesser amount of discretion. See, e.g., *Kolodney* v. *Kolodney*, 6 Conn. App. 118, 121–22, 503 A.2d 625 (1986) (distinguishing ''absolute discretion'' from ''sole discretion''); *Gimbel* v. *Bernard F. & Alva B. Gimbel Foundation, Inc.*, supra, 166 Conn. 27–28 (trust instrument providing for ''sole, absolute and uncontrolled discretion'' recognized by court as having ''imparted to the trustees the widest possible discretion'').

The principal distinction between *Zeoli* and the present case, however, is the manner in which the respective testators expressed their intentions regarding the use of the trust funds. In *Zeoli*, after establishing the trust, the testator provided in his will that ''*it is my fond hope* that my trustee pay or apply the net income or principal of the trust for the maintenance, support, education, health and general welfare of [the beneficiaries] . . . .'' (Emphasis added; internal quotation marks omitted.) *Zeoli* v. *Commissioner of Social Services*, supra, 179 Conn. 86–87 n.2. The court interpreted this to mean that ''[t]he combination of express and precatory terms in the will attempts to grant the trustee flexibility to provide the support that would benefit either of the beneficiaries the most, that is, imposing on the trustee the legal duty to furnish only supplementary support.'' Id., 91. In the present case, the testator created the trust with the following language: ''If [the plaintiff] is then living, the trust established for her shall be retained by my trustees to hold, manage, invest and reinvest said share as a Trust Fund, paying to or expending for the benefit of [the plaintiff] so much of the net income and principal of said Trust as the Trustees, *in their sole discretion, shall deem proper for her health, support in reasonable comfort, best interests and welfare . . . .*''

(Emphasis added.) Thus, the trustees' ''sole discretion'' is limited by the ascertainable standard of the plaintiff's ''health, support in reasonable comfort, best interests and welfare . . . .'' See, e.g., *Kolodney* v. *Kolodney*, supra, 6 Conn. App. 121 (''plaintiff's discretion limited by a standard, that of comfortable maintenance, support and education'' [internal quotation marks omitted]). Put simply, whereas the testator in *Zeoli* imbued his trustees with ''absolute and uncontrolled discretion'' and noted his mere *desire* that the trust be used for the maintenance and support of the beneficiaries; *Zeoli* v. *Commissioner of Social Services*, supra, 86–87 n.2; the testator in the present case created the trust for the purpose of supporting the plaintiff ''in reasonable comfort . . . .'' See, e.g., *Kolodney* v. *Kolodney*, supra, 122 (''[i]t is clear from the testator's use of the comfortable maintenance, support and education standard that the trustee's discretion was not intended to be absolute'' [internal quotation marks omitted]). Absent the requisite testamentary intent to provide only for the plaintiff's supplemental needs, we agree with the department and conclude that the trust in question is a general support trust. Therefore, we conclude that the trial court correctly determined that the hearing officer properly concluded that the trust corpus and income were available to the plaintiff for the purpose of determining her medicaid eligibility.[21]

III

The plaintiff's final claim on appeal is that the hearing officer improperly excluded extrinsic evidence probative of the testator's intent. Specifically, the plaintiff argues that the hearing officer should have admitted into evidence an affidavit from the attorney who had drafted the trust. We are not persuaded.

As we previously noted in part II of this opinion, ''[w]ith respect to questions of law, [w]e have said that [c]onclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts.'' (Internal quotation marks omitted.) *Board of Education* v. *Commission on Human Rights & Opportunities*, supra, 266 Conn. 504.

The plaintiff relies on *Erickson* v. *Erickson*, 246 Conn. 359, 370 n.10, 716 A.2d 92 (1998), citing *Fulton Trust Co.* v. *Trowbridge*, 126 Conn. 369, 372, 11 A.2d 393 (1940), for the proposition that ''extrinsic evidence may be admitted to prove a testator's intent where the language of the will is ambiguous.'' Even if we were to assume that the plaintiff correctly characterizes our law regarding the use of extrinsic evidence to prove testamentary intent, her argument nevertheless fails because she has failed to identify any language in the will that is ambiguous.[22] Our own review of the will reveals no ambiguity, and we therefore conclude that

the trial court properly affirmed the hearing officer's exclusion of the affidavit.[23]

The judgment is affirmed.

In this opinion BORDEN and KATZ, Js., concurred.

[1] The hearing officer found that the "hearing record does not contain substantiation of the type of impairment that caused the Social Security Administration to find the [plaintiff] disabled" and that the plaintiff "did not have a disabling impairment at the time her father signed his will . . . ."

[2] The trustees also distributed $109,159.80 for fees and taxes, $10,968.35 in legal fees, and $711.34 for miscellaneous expenses.

[3] The department granted the plaintiff's application for medicaid benefits on November 3, 1989, but made the benefits effective retroactively, commencing on June 1, 1988. The record reveals that the plaintiff was a recipient of medical assistance to the aged, blind and disabled and a qualified medicare beneficiary.

[4] "'Medicaid is a federal program that provides health care funding for needy persons through cost-sharing with states electing to participate in the program.' " *Szewczyk* v. *Dept. of Social Services*, 77 Conn. App. 38, 40, 822 A.2d 957 (2003), quoting *Greenery Rehabilitation Group, Inc.* v. *Hammon*, 150 F.3d 226, 227 (2d Cir. 1998).

[5] The asset limits are $1600 for the aged, blind and disabled benefits program, and $4000 for the qualified medicare beneficiary program. Dept. of Social Services, Uniform Policy Manual § 4005.10.

[6] The record is unclear as to the date the trustees filed their petition in the Probate Court. The certification page, however, indicates that the petition was mailed to the other parties on February 13, 2001.

[7] General Statutes § 45a-98 (a) provides in relevant part: "Courts of probate in their respective districts shall have the power to . . . (4) except as provided in section 45a-98a, construe the meaning and effect of any will or trust agreement if a construction is required in connection with the administration or distribution of a trust or estate otherwise subject to the jurisdiction of the Probate Court, or, with respect to an inter vivos trust, if that trust is or could be subject to jurisdiction of the court for an accounting pursuant to section 45a-175, provided such an accounting need not be required . . . ."

[8] The trustees notified the plaintiff and the department of their petition, both of whom appeared and fully participated in the Probate Court proceedings.

[9] Pursuant to General Statutes § 45a-123, the Probate Court, *Kurmay, J.*, appointed another judge as a committee to hear the matter and report its findings to the court. On June 11, 2001, the committee issued its report to the Probate Court, which adopted the committee's recommendations in its order of June 12, 2001.

[10] The department subsequently appealed from the Probate Court's order to the Superior Court. The appeal currently is pending. See *Dept. of Social Services* v. *Corcoran*, Superior Court, judicial district of Fairfield, Docket No. CV-01-0385178-S (August 7, 2001).

[11] In her ruling on the record, the hearing officer stated: "I rejected and ignored any correspondence sent after June 8, 2001. The record had closed. I accept no other data into the hearing record." The hearing officer then itemized those materials contained in the record. The Probate Court's order of June 12, 2001, was not included.

[12] General Statutes § 4-181a (a) (1) provides in relevant part: "Unless otherwise provided by law, a party in a contested case may, within fifteen days after the personal delivery or mailing of the final decision, file with the agency a petition for reconsideration of the decision on the ground that: (A) An error of fact or law should be corrected . . . ."

[13] The department also requested a reconsideration of the hearing officer's July 17, 2001 decision, pursuant to § 4-181a (a), to correct its improper reliance on § 40380.80F of the department's Uniform Policy Manual, which applies only to trusts self-funded by the beneficiary. The department's director, Brenda Farrell, granted the request for the purpose of correcting the hearing officer's reliance on § 40380.80F. Thereafter, the hearing officer released a revised decision deleting references to § 40380.80F. The decision was identical in all other respects.

[14] General Statutes § 17b-61 provides in relevant part: "(a) Not later than sixty days after such hearing, or three business days if the hearing concerns a denial of or failure to provide emergency housing, the commissioner or

his designated hearing officer shall render a final decision based upon all the evidence introduced before him and applying all pertinent provisions of law, regulations and departmental policy, and such final decision shall supersede the decision made without a hearing, provided final definitive administrative action shall be taken by the commissioner or his designee within ninety days after the request of such hearing pursuant to section 17b-60. Notice of such final decision shall be given to the aggrieved person by mailing him a copy thereof within one business day of its rendition. Such decision after hearing shall be final except as provided in subsections (b) and (c) of this section.

"(b) The applicant for such hearing, if aggrieved, may appeal therefrom in accordance with section 4-183. Appeals from decisions of said commissioner shall be privileged cases to be heard by the court as soon after the return day as shall be practicable. . . ."

[15] General Statutes § 4-183 (a) provides in relevant part: "A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section. . . ."

[16] The department contends that we should not consider the plaintiff's collateral estoppel claim because it was not raised in the trial court. Specifically, the department maintains that, while the plaintiff argued that the Probate Court's decision should be given preclusive effect before the hearing officer, on appeal to the trial court, the plaintiff merely argued that the hearing officer improperly excluded the Probate Court order. Practice Book § 60-5 provides in relevant part that "[t]he court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial. . . ." In the present case, the trial court did address the issue of collateral estoppel in substance by stating that "[t]he plaintiff claims that the hearing officer, who closed the hearing without considering the order of the Probate Court, erred in not recognizing the Probate Court's construction of the trust." We therefore conclude that the issue of collateral estoppel sufficiently was raised in the trial court.

[17] We are mindful that, in its order, the Probate Court described its duty "to construe the will of the [testator] in the context of the trust's vulnerability to the claims of the . . . [department] that the trust assets were 'available' to the [plaintiff]." The Probate Court, however, did not phrase its order or its analysis in terms of availability to the plaintiff.

[18] The dissenting opinion disagrees with our conclusion that acceptance of the plaintiff's claim requires an intermediate inferential step. Instead, the dissenting opinion maintains that the plaintiff's claim is properly premised on an "inescapable implication . . . ." Regardless of the nomenclature employed, the fact remains that collateral estoppel is intended to preclude litigation when an *identical* issue previously has been decided. If an "inference" or "implication" is needed to equate the contested issues, they are not sufficiently identical to warrant the application of the doctrine of collateral estoppel, with its harsh results.

[19] General Statutes § 52-321 provides in relevant part: "Except as provided in sections 52-321a and 52-352b:

"(a) If property has been given to trustees to pay over the income to any person, without provision for accumulation or express authorization to the trustees to withhold the income, and the income has not been expressly given for the support of the beneficiary or his family, the income shall be liable in equity to the claims of all creditors of the beneficiary. . . .

"(d) If any such trust has been expressly provided to be for the support of the beneficiary or his family, a court of equity having jurisdiction may make such order regarding the surplus, if any, not required for the support of the beneficiary or his family, as justice and equity may require. . . ."

[20] The plaintiff makes much of the fact that the testator authorized the trustees to consider the "advisability of *supplementing* such income or assets" in making distributions. (Emphasis added.) To the extent that the plaintiff claims that the mere use of the word "supplement" creates a supplemental needs trust, we disagree. As we already have noted, the testator's intent is "determined from reading the instrument *as a whole* in the light of the circumstances surrounding the testator when the instrument was executed . . . ." (Emphasis added.) *Gimbel* v. *Bernard F. & Alva B. Gimbel Foundation, Inc.*, supra, 166 Conn. 26. Therefore, the use of the word "supplement" is not dispositive of the issue.

[21] The plaintiff's reliance on *Bridgeport* v. *Reilly*, supra, 133 Conn. 31, is equally unavailing. In that case, this court affirmed the trial court's decision prohibiting the city of Bridgeport, as a creditor, from seeking reimbursement

for the hospitalization of the plaintiff, who was mentally insane, from the trust of which he was a beneficiary. Id., 32. It is axiomatic that creditors have limited access to spendthrift trusts. See General Statutes § 52-321. Moreover, the ability of the state to reach the trust funds is not the proper inquiry in this particular case. Rather, the dispositive issue is the availability of the trust funds to the plaintiff.

[22] To the extent that the plaintiff argues that the language of the testator's will is ambiguous as to whether the trust was intended for the plaintiff's general support or supplemental needs, we note that ''the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous.'' (Internal quotation marks omitted.) *United Illuminating Co.* v. *Wisvest-Connecticut, LLC*, 259 Conn. 665, 670, 791 A.2d 546 (2002).

[23] The plaintiff also claims that the affidavit should be admitted to show the circumstances that existed at the time the will was drafted. Again, the plaintiff has failed to demonstrate the existence of an ambiguity, which is a necessary predicate for consideration of extrinsic evidence of the testator's intent.