

No. A05-2346

STATE OF MINNESOTA
IN SUPREME COURT

In re the Estate of:

Francis E. Barg, a/k/a Francis Edward Barg

APPELLANT'S SUPPLEMENTAL RESPONSE BRIEF

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OTHER AUTHORITIES

Kaiser Family Foundation, State Medicaid Fact Sheet,
Minnesota, <http://www.statehealthfacts.org/medicaid.asp>1

Minnesota State Medicaid Plan, Transmittal No. 007-05, Attachment 4.17A7

U.S. Dep’t of Health & Human Servs., Medicaid Estate Recovery Programs
(Mar. 1995)2

I. THE FEDERAL LAW'S PLAIN LANGUAGE DOES NOT BAR STATES FROM USING SPOUSAL RECOVERIES AS A MEANS OF RECOVERY (OR LIMIT THEIR SCOPE)

A. 42 U.S.C. § 1396p(b)(1)'s "No . . . Recovery" Clause Does Not Apply To Recovery Of The Medical Assistance Paid On Behalf Of Dolores Barg

The Estate contends that 42 U.S.C. § 1396p(b)(1), which begins with the words "No . . . recovery," "means what it says" and "unequivocal[ly]" prohibits recovery in this case. Resp.Supp.Br. 11, 3. The Estate's absolutism is akin to that of Justice Hugo Black who insisted, with respect to the First Amendment, that "'No law' means no law." See Evan v. Am. Fed'n of Television & Radio Artists, 354 F.Supp. 823, 845 (S.D.N.Y. 1973). The federal statute at issue here, however, is not susceptible to such an absolutist construction. It provides that:

(1) No . . . recovery of any medical assistance . . . may be made, except that the State shall seek . . . recovery of any medical assistance . . . in the case of the following individuals:

....
(B) In the case of an individual who was 55 years of age or older when the individual received such medical assistance, the State shall seek . . . recovery from the individual's estate, but only for medical assistance consisting of--

(i) nursing facility services, home and community-based services, and related hospital and prescription drug services, or

(ii) at the option of the State, any items or services under the State plan.

(emphasis added). In the context of this law, "no recovery" simply means "no recovery" only of the assistance paid on behalf of individuals under age 55. That means that the assistance paid on behalf of the 88% of Minnesota Medicaid enrollees who are children, pregnant women, parents of young families, or disabled, who are under age 55 are not subject to recovery. See Kaiser Family Foundation, State Medicaid Fact Sheet, Minnesota, <http://www.statehealthfacts.org/medicaid.asp> (last visited Feb. 13, 2008).

The exception to "no recovery," though, applies to assistance paid on behalf of the entire class of recipients to which Dolores Barg belongs. For that class, "no recovery"

simply does not apply. Consequently, the focus in this appeal is on what express conditions, if any, are placed on states as to recovery of benefits for the over 55 class of individuals.

There are three clear conditions relating to that class and recovery. The first condition is that states “shall seek . . . recovery from the individual’s estate” for long-term care benefits. The “estate” for which mandatory recovery applies must include assets and property that are included in a probate estate, as defined by state law. 42 U.S.C. § 1396p(b)(1)(B) & (4)(A). This declaration of a state’s precise obligation upon acceptance of federal matching funds to pursue recovery does not, however, limit the means through which states can seek recovery. See U.S. Dep’t of Health & Human Servs., Medicaid Estate Recovery Programs at 2 (Mar. 1995) (hereinafter “HHS 1995”), available at <http://oig.hhs.gov/oei/reports/oei-07-92-008800.pdf> (stating that the recovery programs required by OBRA 93 “may be developed in any manner that is approved by each state.”).

The specificity of this first condition reflects Congress’s compliance with the clear statement rule for conditional grants under the Spending Clause. See South Dakota v. Dole, 483 U.S. 203, 207, 107 S.Ct. 2793, 2796 (1987) (“if Congress desires to condition the States’ receipt of federal funds, it must do so unambiguously ..., enabl[ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation,” (quotation marks omitted)). The condition also reflects the minimum steps necessary to carry out Congress’s desire to jump start recovery after it was presented with a series of reports that most states had undertaken no recovery efforts.

The second condition is that recovery be delayed until after a surviving spouse’s death (or if there are dependent children). 42 U.S.C. § 1396p(b)(2). This condition reflects the only expressed federal purpose for any limitations on recovery: to allow a couple’s lifetime use of assets. This condition also means that when there is a surviving spouse, the only forum for the delayed recovery will be from that spouse’s probate estate.

Congress did not mandate, as a means of recovery, that all states seek recovery from a surviving spouse's probate estate. Nor did Congress prohibit using spousal recoveries. This flexibility is confirmed by the 1995 federal report cited above. The report states that "OBRA '93 provides for recovery from the estate of a deceased surviving spouse." HHS 1995 at 8. It notes that 10 out of 27 states with recovery programs used spousal recoveries as means of recovery. *Id.* at 8, C-1. The report explains that the reason other states were not using spousal recoveries was the difficulty in tracking information and monitoring spouse cases. *Id.* At 8-9. No mention is made of a prohibition or limitation on using spousal recoveries or any problem with such recoveries other than that states thought they were too difficult to implement.¹

The third condition on recovery of assistance paid on behalf of those age 55 and older is that states must adopt procedures for granting hardship waivers. 42 U.S.C. § 1396p(b)(3). This express condition negates the Estate's belated attempt to claim that there is an implied general purpose in federal law to provide "financial protection to the families of Medicaid recipients." Resp.Supp.Br. 22 (quoting *Hines v. Dep't of Pub. Aid*, 850 N.E.2d 148, 152 (Ill. 2006)). That claim is based on a passing statement in *Hines*, not on any specific federal provision or statement. The hardship waiver requirement is the only federal condition that is related to protections for family members not already covered by the delayed recovery condition. There is no federal purpose or statute that can be construed to do what the Estate wants: to use public funds to subsidize the inheritance of the Bargs' heirs.

Although the above are the only clearly stated conditions, the Estate repeatedly misstates section 1396p(b)(1)'s actual language in an attempt to create a fourth condition: that there will be no recovery "except 'from the individual's estate.'" *See, e.g.,*

¹ Respondent claims that Congress "rejected" a version of legislation that "allowed" spousal recoveries. Resp.Supp.Br. 4, 5. This characterization is unsupported. What Respondent refers to is the House bill that required all states to do spousal recoveries.

Resp.Supp.Br. 4, 17, 25. The Estate thus ignores that the exception to “no recovery” is only based on assistance received by classes of individuals (“except . . . in the case of the following individuals”) — not on the means through which a state chooses to seek recovery of the assistance received by that class.

B. Alternatively, If Section 1396p(b)(B)(1)’s Reference To “Estate” Imposes A Condition On Recovery, Then Section 1396p(b)(4)(B)’s Use of “Assets,” As Defined in § 1396p(e), Incorporates Spousal Resources Into “Estate”

If section 1396p(b)(1) imposes a clear condition that recovery “shall [only] be from the individual’s estate,” then it is necessary to construe section 1396p(b)(4), concerning the role of the term “estate.” The Estate’s plain language interpretation attempts to impose a limit on the term “estate” to preclude recovery in this case, where no limitation is supported by the text. Section 1396p(b)(4)(B) states that the term “estate” “may include . . . any other real and personal property and other assets.” “Assets” is defined as including the resources of an individual or her spouse. 42 U.S.C. § 1396p(e)(1). Any legitimate plain language construction of “estate” in section 1396p(b)(4)(B) cannot ignore Congress’s inclusion of assets and its definition thereof. Yet, the Estate has consistently ignored this term.²

Congress’s purpose in including the expanded estate option (and the parenthetical phrase “to the extent of such interest”) was not to impose a new limitation on states. Rather, the purpose was to provide a definite rebuke to the 9th Circuit’s narrow holding in Citizen’s Action League v. Kizer. That purpose is demonstrated by Congress’s use of permissive, nonexclusive, expansive language. The Estate’s only counterargument is that Congress did

² At oral argument the Estate asserted that the definition of “assets” applied to eligibility. Nothing in section 1396p(e)(1) limits the definition of “assets” to eligibility. Rather the definition of “assets” applies whenever the term is used in section 1396p. 42 U.S.C. § 1396p(e) (“In this section, the following definitions shall apply”); see Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 733 n.5, 95 S.Ct. 1917, 1924 n.5 (1975) (cannot ignore Congress’s definition of word to be used in a statute). The Estate cannot selectively exclude statutory language: you go to court with the statutory language you have, not the statutory language you wish you had.

not explicitly refer to the Kizer decision itself but, Congress is presumptively aware of existing caselaw interpreting statutes. Cannon v. Univ. of Chicago, 441 U.S. 677, 696-98, 99 S.Ct. 1946, 1957-58 (1979). Tellingly, the Estate is unable to offer any alternative explanation that accounts for section 1396p(b)(4)(B).

C. The Federal Medicaid Statutory Context Confirms Appellant's Plain Language Construction

Throughout this litigation, the Estate has failed to point to any Medicaid statute (or legislative history) that confirms its narrow interpretation of either the validity of spousal recoveries or the purported limitation on the scope of such recoveries. All Medicaid provisions related to spouses contradict its position. The Estate provides no rationale for why Congress would fundamentally change its treatment of spousal resources only for recoveries by prohibiting recovery whenever there is a surviving spouse.

By contrast, the federal Medicaid statutory context confirms Appellant's construction that spousal recovery is allowed and that the scope of such recovery can be from the entirety of marital assets. Medicaid expressly allows states to hold spouses liable for medical expenses, considers all spousal assets available regardless of formal ownership, imposes penalties for transfers of assets outside of the spousal relationship by either spouse, necessarily implies spousal recovery claims due to delayed recovery, and defines "assets" as including all spousal resources. See, respectively, 42 U.S.C. §§ 1396a(a)(17)(D), 1396r-5(c)(2)(A), 1396p(c)(1)(A), 1396p(b)(2), 1396p(e)(1). This statutory context, at a minimum, requires a holding that allowance for spousal recovery is a reasonable interpretation of federal law.

II. THE ESTATE'S ASSERTION THAT MINNESOTA HAS FAILED TO "CONFORM" TO THE 1993 MEDICAID AMENDMENTS IS ERRONEOUS

The Estate asserts that Minnesota has "refused ... to conform" to the 1993 Medicaid amendments. Resp.Supp.Br. 3, 5. To the contrary, Minnesota's Medicaid recovery laws —

especially as applied to nonrecipient spouses — meet all federal Medicaid conditions. Minnesota’s “conform[ity]” is demonstrated by federal approval by the Centers for Medicare and Medicaid Services (“CMS”) approval of Minnesota’s State Medicaid Plan, which is the central document establishing the federal-state relationship and any conditions on receipt of federal matching funds.

Any doubt about Minnesota’s compliance with federal law was removed by CMS’ recent approval of an amendment to Minnesota’s state plan that expressly incorporates into that federal-state agreement the very spousal recovery provisions that the Estate claims do not “conform” to federal requirements. This amendment squarely addresses the precise question now before the court.³ See 2d Taylor Affid. Ex. E. p. 11-12 (submitted as supplemental authority by the Commissioner of Human Services). Thus, the federal agency charged with enforcing Medicaid has approved the specific spousal recovery provisions at issue here: both as to whether spousal recovery in general is permitted and also as to the scope of recovery as provided by Minn. Stat. § 256B.15, subs. 1a, 2.⁴

³ After amendment, the plan states that, when recovery is made by filing a claim in the estate of a surviving nonrecipient spouse, recovery “applies to the full value of all assets and interests in the estate of the nonrecipient spouse that were property of or can be traced to property held by the recipient spouse or the nonrecipient spouse or both during the marriage. Any assets, proceeds of assets and income from such assets, that were jointly owned property at any time during the marriage or marital property including all property in which either spouse had an interest at the time of marriage and property acquired by either or both during the marriage, regardless of how acquired, titled, or owned are subject to recovery. Recovery in the estate of the nonrecipient spouse does not apply to assets attributable to a subsequent spouse when the nonrecipient spouse has remarried, or to assets acquired individually with non-marital assets by the recipient spouse after the death of the recipient spouse.” Minnesota State Medicaid Plan, Transmittal No. 007-05, Attachment 4.17A.

⁴ Also, federal approval of Minnesota’s state Medicaid plan, incorporating the statutes at issue here is “compelling evidence” that federal law “is susceptible to different reasonable interpretations.” Cf. In re Cities of Annandale and Maple Lake NPDES/SDS Permit Issuance for the Discharge of Treated Wastewater, 731 N.W.2d 502, 521 (Minn. 2007).

III. NO COHERENT RATIONALE OR POLICY SUPPORTS THE ESTATE'S POSITION

The Estate's insistence that recovery can only be from a recipient's probate estate, Resp.Supp.Br. 10, has no foundation in the text of the federal statute. Such a limitation would be out-of-sync with all other federal Medicaid laws concerning spouses. See Martin ex rel. Hoff v. City of Rochester, 642 N.W.2d 1, 11 (Minn. 2002) (first step in preemption analysis is to harmonize federal law). In addition, the Estate has not identified a coherent policy or rationale that supports its interpretation. It seemingly alludes to a federal purpose when it asserts that a claim against a surviving community spouse's estate "would defeat the purpose of the federal provision." Resp.Supp.Br. 11. But, it does not state what that purpose is.

The Estate does assert that "[t]he inclusion of marital property that was transferred to the non-recipient surviving spouse during the deceased recipient's lifetime⁵ violates the federal policy to focus on the recipient's property ownership at the time of death." Resp.Supp.Br. 12 (emphasis in original). However, there is no such policy for spousal assets. See, e.g., 42 U.S.C. §§ 1396r-5(c)(2)(A) (all spousal assets available regardless of formal ownership), 1396p(c)(1)(A) (imposing penalties for transfer of assets by either spouse).

The only purpose that is evident from the statute is that marital resources are protected for the lifetime use of a recipient and her spouse for their care and support. When that purpose has been accomplished, recovery is entirely appropriate. See In re Estate of Jobe, 590 N.W.2d 162, 166 (Minn. Ct. App.) rev. denied (Minn. 1999). Medicaid simply

⁵ The Estate asserts that recovery is barred because Dolores Barg "lawfully conveyed" any interest she had in property before her death. Resp.Supp.Br. 3, 17. The Estate's reliance on the "lawfulness" of the transfer is misplaced, however. Only transfer of a homestead to a spouse will avoid an eligibility penalty. 42 U.S.C. § 1396p(c)(2)(A)(i); Minn. Stat. § 256B.0595, subd. 3(a)(i) (2006).

does not protect postdeath inheritances; it protects couples from destitution during their lifetimes.

IV. THE ESTATE GIVES NO VALID BASIS FOR NULLIFYING THE LEGISLATURE'S USE OF "MARITAL PROPERTY" TO DEFINE THE SCOPE OF RECOVERY

The Estate asserts that Minnesota statutes do not include a definition of marital property to be used in estate recovery. Resp.Supp.Br. 12, 16. That assertion begs the question of what meaning to give "marital property" if not the definition in section 518.003, subd. 3b. See Evans v. United States, 504 U.S. 255, 260 n.3, 112 S.Ct. 1881, 1885 n.3 (1992) (quoting Justice Frankfurter's advise that "if a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it."). The Estate has never suggested an alternative meaning.⁶ There is no valid basis to ignore the legislature's use of the term "marital property" and violate the principle that a court "give effect, if possible, to every clause and word of a statute." Moskal v. United States, 498 U.S. 103, 110, 111 S.Ct. 461, 466 (1990).

Alternatively, "marital property" can be read in pari materia with other Minnesota Medicaid statutes on the availability of marital assets to pay for medical care. See State v. Lucas, 589 N.W.2d 91, 94 (Minn. 1999). Under those statutes, "the total value of all assets in which either spouse has an ownership interest" is generally available. Minn. Stat. § 256B.059 (a) (2006). This meaning is broader than the section 518.003 definition, but it is still within the boundaries of federal Medicaid law because it limits liability to spousal assets and does not reach the assets of nonspouse family members. See, e.g., 42 U.S.C. §§ 1396r-5, 1396a(a)(17)(D), 1396p(e)(1).

⁶ The Estate does argue that a marital property interest is inchoate and therefore unrecoverable because it has "no value." Resp.Supp.Br. 19-20. This argument ignores Congress's inclusion of "interest" in the expanded estate option. Moreover, whether a particular interest has value or is inchoate is irrelevant in construing the relationship between federal and state statutes. The only concern of section 1396p(b)(4)(B) is that there is a recognized interest, not with how a state determines the extent or value of that interest for recovery purposes.

The Estate's claim that "marital property" is of an "unlimited nature" is simply wrong. Resp.Supp.Br. 12. The section 518.003 definition contains exceptions for separately-owned property. An in pari materia meaning is limited to spousal assets. Also, North Dakota judicially adopted the same scope of recovery from marital property that Minnesota established legislatively with section 518.003. In re Estate of Wirtz, 607 N.W.2d 882, 886 (N.D. 2000) (precluding recovery from spouse's separately-owned assets). What may appear "unlimited" from the perspective of a disappointed heir still does not impose any liability on the heir's own assets.

In addition, "marital property" is congruent with the benefit received by both spouses from the existence of Medicaid to pay for necessary medical expenses. Without the safety net provided by Medicaid, all of Francis and Dolores' property would have been called upon during their lifetimes to pay for Dolores' care. See Minn. Stat. § 519.05 (2006) (making spouses joint and severally liable for necessary medical expenses); see also In re Revocable Trust of Margolis, 731 N.W.2d 539, 544-45 (Minn. Ct. App. 2007) (husband had statutory obligation to pay for wife's nursing home care).⁷

V. THE MARTEN CASE ILLUSTRATES THAT THE ONLY LIMITS ON A STATE'S MEANS OR SCOPE OF RECOVERY ARE GENERAL CONSTITUTIONAL RIGHTS, NOT PREEMPTION BY FEDERAL STATUTE

The Estate's discussion of the Marten case, Resp.Supp.Br. 6-8, illustrates that federal Medicaid law does not constrain Minnesota laws that regulate interests in property and determine the scope of recovery from those interests. Rather, as with any other law passed in the exercise of sovereign powers, the only constraints are political — i.e., the willingness

⁷ The Estate claims that any interest Dolores Barg has was a "fictional" one. Resp.Supp.Br. 20. The Estate's own fiction-writing, however, is its insistence that the only connection between Dolores and Francis Barg was the appearance of their names on a certificate of title. Is it a fiction, then, that Dolores and Francis continued to be connected by a marriage certificate and their marital relationship? According to Medicaid, their marriage and the obligations to one another of spouses in a marital relationship were not fictitious. Minnesota's recovery laws recognize these unique connections and obligations of spouses.

of the legislative branch to pass a particular law — or constitutional protections, such as substantive due process.

Minnesota's recovery from the entirety of marital property now in Francis' probate estate satisfies substantive due process. Where there is no fundamental right at issue, "substantive due process requires only that legislative enactments not be arbitrary or capricious or, stated another way, that they be a reasonable means to a permissive object." State v. Behl, 564 N.W.2d 560, 567 (Minn. 1997). Thus, the question is whether recovery from the entirety of marital property remaining in a surviving spouse's estate "bear[s] some rational relation to the accomplishment of a legitimate public purpose"? Manufactured Housing Institute v. Pettersen, 347 N.W.2d 238, 243 (Minn. 1984).

This Court has already held that benefit recovery furthers the important public purpose of reusing funds for the care of needy individuals (and does not violate equal protection). See In re Estate of Turner, 391 N.W.2d 767, 770 (Minn. 1986). Recovery from the entirety of marital property is a rational means of accomplishing that purpose for three reasons. First, when applying for Medical Assistance, applicants and their spouses knowingly subject themselves to eligibility rules that consider all marital resources available, regardless of title. It is reasonable, then, that recovery be to the same extent and include all spousal assets. Second, marital property that is in the surviving spouse's probate estate has been preserved because of the existence of Medicaid, which has saved the couple from the destitution that would result from the expenditure of all the assets for the institutionalized spouse's medical care. Third, the liability of the estate is the same as that provided for by generally applicable state law making spouses jointly and severally liable for the necessary medical expenses of one another. Minn. Stat. § 519.05.

CONCLUSION

Appellant respectfully asks the Court to reverse the Court of Appeals' decision in this case and remand to the district court with instructions to allow Appellant's claim in full.

Dated: February 15, 2008.

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