

STATE OF MICHIGAN  
IN THE PROBATE COURT FOR  
THE COUNTY OF GRATIOT

In re: Estate of Amy Grosskopf

MICHIGAN DEPARTMENT OF  
COMMUNITY HEALTH

Plaintiff,

File No. 12-138-CZ

V

ESTATE OF AMY GROSSKOPF

Hon. Kristin Bakker

Defendant.

**OPINION**

**Factual Summary**

This matter came before the Court on Defendant's Motion for Summary Disposition. The issues presented relate to the Michigan's estate recovery statute enacted by the Michigan legislature in 2007 and, the implementation of that statute by the Department of Community Health. The undisputed facts are as follows: The estate recovery statute in Michigan took effect on September 30, 2007. The statute required federal approval of changes to Michigan's State Plan Amendment (SPA) prior to implementation of its provisions. Federal approval of Michigan's SPA was received on May 23, 2011. The effective date of the SPA was identified by the Centers for Medicaid as July 1, 2010. Decedent Amy Grosskopf received medicaid benefits between July 2008 and her death on May 3, 2012. At the time of enrollment, Grosskopf did not receive any written materials explaining Michigan's Estate Recovery program. The first evidence of written materials regarding

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PROBATE REGISTER  
GRATIOT COUNTY  
PROBATE COURT

“estate recovery” being provided to Defendant is a Long Term Care Medicaid Redetermination Notice (DHS-0035) and accompanying form DHS-4574 (Rev. 10-11) which included an attachment titled “Acknowledgments.” Section 12 of the “Acknowledgments” included the following language:

12. Estate Recovery. I understand that upon my death the Michigan Department of Community health has the legal right to seek recovery from my estate for services paid by Medicaid. MDCH will not make a claim against the estate while there is a legal surviving spouse or a legal surviving child under the age of 21, blind or disabled living in the home. An estate consists of real and personal property. Estate recovery only applies to certain medicaid recipients who received Medicaid services after the implementation date of the program. MDCH may agree not to pursue recovery if an undue hardship exists. For further information regarding Estate Recovery, call 1-877-791-0435.

The Long Term Care Medicaid Redetermination Notice (DHS-0035) and accompanying form DHS-4574 were mailed April 16, 2012 and executed by the decedent’s son and durable power of attorney on April 30, 2012.

The Plaintiff filed a timely claim against the estate of the Amy Grosskopf seeking reimbursement for Medicaid expenses in the amount of \$107,415.98 paid between July 2010 and the decedent’s death in May 2012. Defendant denied the claim and filed this motion for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10) asserting that Plaintiff should be barred from recovering Grosskopf’s Medicaid benefits from the estate. Defendant asserts that Plaintiff lacks statutory authority to implement estate recovery against the Estate of Amy Grosskopf pursuant to MCL 400.112g and asserts Plaintiff’s claim is invalid due to its failure to provide notice required by MCL 400.112g.

### **Legal Issue and Arguments**

### **1.) Lack of Statutory Authority**

Defendant asserts Plaintiff lacks the statutory authority to implement estate recovery pursuant to MCL 400.112g and has failed to state a claim upon which relief can be granted pursuant to MCR 2.116(C)(8). Motions brought pursuant to this rule test the legal sufficiency of the plaintiff's claim and should be granted when no factual development could justify the claim for relief. Michigan's Estate Recovery statute, MCL 400. 112g, became law on September 30, 2007 and provides the authority and mechanism to pursue claims. Facts which support compliance with the provisions of the statute could justify a claim for relief. Therefore, Defendant's Motion for Summary Disposition on this basis is denied.

### **2.) Failure to Provide Notice**

Defendant asserts the Plaintiff's claim for reimbursement is invalid due to its failure to provide notice required by MCL 400.112g. Defendant specifically alleges the Plaintiff failed to comply with MCL 400.112g(3)(e) and MCL 400.112g(7). Plaintiff argues the notice requirement has been satisfied and that the claim against the estate is timely and valid. In support of this claim, Plaintiff cites the written material provided to the decedent Grosskopf in April of 2012, enactment of the law, the existence of various publications regarding estate recovery. Plaintiff further asserts that the failure to provide written materials does not bar Plaintiff's claim and argues that the approved Michigan State Plan Amendment (SPA) did not adopt the notice provision required by the statute and that neither the SPA nor the statute specifically identify denial of a claim as the remedy for lack of notice. Plaintiff asserts the statute should be construed liberally for the public purpose of preventing individuals from using taxpayer monies for personal care while preserving assets.

While the facts of this case can be distinguished, the unpublished opinion of the Clinton

County Probate Court in *Michigan Dept't Cmty Health v Estate of Kathryn M. Salemka-Shire* (Case No. 11-127599-CZ) cited by Plaintiff and Defendant in their briefs has analyzed issues similar to those presented in the present case. In the Clinton county case, the decedent Shire, received medicaid benefits from October 2010 until her death in November of 2010. As such, she applied for benefits after Michigan's estate recovery program became law in September of 2007, after the July 1, 2010 effective date of the SPA, but prior to federal approval of the SPA on May 23, 2011. It was undisputed that Shire had received no written materials about Michigan's SPA at the time of her enrollment to receive Medicaid benefits.

In the present case, the decedent Grosskopf received medicaid benefits between July of 2008 and May of 2012. As such, she applied for benefits after Michigan's estate recovery program became law in September 2007, but prior to the July 1, 2010 effective date of the SPA and prior to federal approval of the SPA on May 23, 2011. Like Shire, it is undisputed that decedent Grosskopf did not receive written materials regarding estate recovery at the time of her enrollment in July of 2008. Unlike Shire, who passed away prior to federal approval of Michigan's SPA, Grosskopf received benefits after federal approval of Michigan's SPA and did receive written materials regarding Michigan's estate recovery program as part of a "redetermination of benefits process" in April of 2012.

In *Shire, Id.*, the Defendant filed a motion for summary disposition and asserted the notice was insufficient to support a valid claim against the estate by the Department of Community Health. Plaintiff, Michigan Department of Community Health, argued in that case as follows: 1) that the mere existence of the statute satisfies its notice obligation under MCL 400.112g(7); 2) that even if Plaintiff failed to satisfy the statutory notice requirement to Shire, recovery should not be barred;

3) that the Michigan Statute nor its SPA include a sanction of dismissal where notice provisions have not been followed. Plaintiff further asserted that Michigan statute should be construed liberally for the public purpose of preventing individuals from using taxpayer monies for personal care while preserving assets. The Court granted Defendant Shires's Motion for Summary Disposition holding notice was insufficient and, therefore, the Plaintiff's claim was not valid. In the present case, Plaintiff has asserted similar arguments. While the opinion of the Clinton County Probate court is not binding precedent, the analysis of the issues is well reasoned and instructive when reviewing the issues presented in the present case.

While Plaintiff and Defendant acknowledge through their arguments that Michigan's Estate Recovery law requires some form of "notice" to medicaid recipients regarding the potential recovery from their estate of medicaid benefits paid for long term care, it is the manner by which notice is to be accomplished and the remedy for failure to comply at issue. Defendant argues the statutory language creates a statutory notice provision and that the remedy for failing to comply is dismissal of a claim against the estate. Plaintiff argues that neither the SPA or the statutory language allow dismissal as a remedy for insufficiency of notice and that a broader interpretation of the notice provisions is warranted.

The primary goal of statutory construction is to identify the legislative intent that may reasonably be inferred from the statutory language and every word or phrase of a statute should be accorded its plain and ordinary meaning given the context in which the words are used. *Krohn v Home-Owners, Ins.*, 490 Mich 145; 802 NW2d 281 (2011). When the Legislature has clearly expressed its intent in the language of the statute, no further construction is required or permitted. *Sun Valley Foods Co. v Ward*, 460 Mich 230 at 236, 596 N.W. 2d 119. When undertaking statutory

interpretation, the provisions of a statute should be read reasonably and in context. *Id at 236 - 237.*

MCL 400.112(g)(2) states the department of community health “shall establish an estate recovery program” and sets forth the program activities, including tracking of medicaid recipient assets, determining under the federal statute which services and recipients are subject to recovery and, finally requiring the department to “take into account the best interests of the state and the spouse and heirs.” MCL 400.112g(3) requires the department of community health to seek “appropriate changes to the Michigan medicaid state plan (SPA)” from the federal government in order to implement Michigan’s medicaid estate recovery program and, specifically identifies the factors for which the department of community health must seek federal approval including “under what circumstances the estates of medical assistance recipients will be exempt from the Michigan Medicaid estate recovery program because of a hardship.” MCL 400.112g(3)(e) states that the department “at the time of enrollment shall provide written material explaining the process for applying for a waiver from estate recovery due to hardship”. MCL 400.112g(7) states the department of community health “shall provide written information to individuals seeking medicaid eligibility for long term care services describing the provisions of the Michigan medicaid estate recovery program including but not limited to a statement that some or all of their estate may be recovered.” The unambiguous language of MCL 400.112g(3)(e) and MCL 400.112g(7) require written materials regarding hardship and estate recovery to be provided to individuals seeking benefits for long term care. Read together, the provisions of Michigan medicaid estate recovery program create a procedure by which the department of community health can recover the costs of benefits paid from the estates of medicaid recipients upon their death. That procedure requires actual notice in the form of written materials to potential medicaid recipients at the time of enrollment. Compliance with that

procedure could not and did not occur at the time of decedent Grosskopf's enrollment.

The Plaintiff asserts a broader interpretation of the notice provisions is warranted and that dismissal of its claim is not a proper remedy stating "Nothing in the statute suggests that the legislature intended to render the entire statute inoperative as a penalty for failure to give specific notice." (*Plaintiff's Brief, p. 7*) In *Shire, Id.*, the court rejected this argument citing the underlying federal statute, the Due Process Clause of the Fourteenth Amendment, and public policy. This Court finds that analysis compelling and applicable to the present case.

First, the federal statute, 42 USC 1396p, Section 1917(b)(1) states there can be no recovery of Medicaid benefits paid to enrollees except under the provisions of an SPA. The provisions of Michigan's SPA did not receive federal approval until May 23, 2011. As such, the provisions of Michigan's SPA required by Michigan's estate recovery statute were not approved or available to decedent Grosskopf at the time of her medicaid enrollment. Therefore, recovery from Grosskopf's estate is prohibited by federal law.

Second, the state and federal constitutions guarantee that no person shall be deprived of life, liberty or property without due process of law. US Const. Am XIV; Const 1963, art 1, § 17. The Due Process Clause of the Fourteenth Amendment requires notice and an opportunity to be heard when property interests are at stake. *Dusenberry v United States, 534 US 161, 122 S. Ct 694, 151 L Ed2d 597 (2002)*. In the present case, the Plaintiff seeks recovery from the estate of Grosskopf for medicaid benefits primarily paid prior to the decedent's receipt of any written materials regarding estate recovery and for benefits paid prior to federal approval of the SPA. Plaintiff argues the statute itself constituted notice to the public and was available at the time of Grosskopf's enrollment. The Court finds this notice insufficient to support a valid claim for reimbursement. The statute was

prospective in nature and required applicants for medicaid benefits to speculate as to applicability and impact on their estates, contingent on the amendments to the SPA. Plaintiff argues that in May of 2011 its website and other publications became available to the public and provided notice. The Court finds the form and timing of this notice insufficient. The website materials and publications postdate Plaintiff's enrollment, part of Plaintiff's claim for reimbursement and, this Court finds that regardless of timing, due process and Michigan's estate recovery statute requires notice to medicaid applicant's beyond that which is provided by website or general publications. Lastly, Plaintiff asserts the written materials provided to decedent Grosskopf in April of 2012 provided notice and a valid basis for the claim against the estate. The Court finds the materials provided in April of 2012 insufficient to support a claim for reimbursement dating back to July of 2010. Due process is a flexible concept, but its essence is fundamental fairness. *Bonner v City of Brighton*, Michigan Court of Appeals Docket No. 302677 citing *Reed v Reed*, 265 Mich. App. 131, 159; 693 NW2d 825 (2005). Courts have held that substantial compliance may be sufficient to satisfy a statutory notice provision. *Meridith v Melvindale*, 381 Mich 572, 579-580; 165 Nw2d 7 (1969); *Livonia v Dep't of Social Services*, 423 Mich 466, 513; 378 MW2d 402 (1985). The facts of the present case do not establish substantial compliance. Plaintiff seeks to recover costs of benefits paid for a period time where Defendant had no actual notice and for a period of time where the terms of SPA had not received federal approval. The statutory notice provisions in Michigan's estate recovery law afford potential recipients of Medicaid benefits the opportunity to make an informed decision regarding placing their estate at risk of recovery by Plaintiff. Decedent Grosskopf was not afforded a meaningful opportunity to appreciate and understand the potential liability of her estate at the time of her initial application for medicaid benefits. Decedent Grosskopf was not afforded due

process of law.

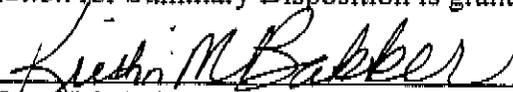
Third., the evidence established that decedent Grosskopf required long term care for more than three years prior to her death and that her affairs were being handled by her son and her durable power of attorney. *In Shire, Id*, the court wrote, "as a matter of public policy, individuals seeking Medicaid benefits are usually of limited means and medically fragile. They are turning to the state as a payer of last resort for their immediate health care and are vulnerable to decisions of duress." The statutory notice provisions contained within the medicaid recovery statute protects the interests of this vulnerable class of individuals. To allow recovery of claims without requiring compliance renders the notice provisions of the statute meaningless. For these reasons, Defendant's Motion for Summary Disposition pursuant to MCR 2.116C(10) is granted.

**ORDER**

At a session of court held in the Probate courtroom  
in Gratiot County, Michigan on this 17<sup>th</sup> day of April, 2012.  
Hon. Kristin M. Bakker, Gratiot County Probate Judge

This matter came before the Court on Defendant's Motion for Summary Disposition, having reviewed the Motions and Briefs filed by the parties, having heard legal arguments in open Court, being otherwise fully advised in the premises, and for the reasons stated in the foregoing opinion.

**IT IS ORDERED** that Defendant's Motion for Summary Disposition is granted.

  
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Hon. Kristin M. Bakker P49056  
Gratiot County Probate Judge