

STATE OF MICHIGAN
HILLSDALE COUNTY PROBATE COURT

In re: The Estate of

File #2013-34929-CZ

RALPH E. WILSON

Hon. Michelle A. Bianchi
Probate Judge

MICHIGAN DEPARTMENT OF
COMMUNITY HEALTH,

Claimant/Plaintiff,

V

ESTATE OF RALPH E. WILSON,

Estate/Defendant.

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ORDER

BACKGROUND

This matter came before the Court on Respondent's Motion for Summary Disposition under MCR 2.116(C)(10) and request for Sanctions. Oral arguments were presented to the Court on July 30, 2014.

The facts in this case are undisputed. Plaintiff, Michigan Department of Community Health, submitted a creditor's claim to the Personal Representative, Kimberle J. Kurdys, against the Estate of Ralph E. Wilson ("decedent") for recovery of Medicaid payments paid by the State of Michigan for decedents long term care in the amount of \$144,687.03. The Personal Representative for the Estate filed a Notice of Disallowance of Claim for the entire amount. The disallowance resulted in plaintiff filing the current civil law suit under MCR 5.101(C), for allowance of its claim and payment according to the priority of claims set out in MCL700.3805.

Michigan's Estate Recovery Statute, MCL 400.112(g), was signed into law on September 30, 2007. However, the State 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 granted on May 23, 2011 with an effective date of July 1, 2010. Decedent Ralph E. Wilson, began receiving payments in between those two dates, that being October, 2010. Decedent continued to receive benefits until his death on March 5, 2013. At the time of enrollment, Mr. Wilson did not receive any written materials explaining Michigan's State Recovery Program. The first written reference to "estate recovery" appears in the Application for Redetermination filed by Kimberle Kurdys on January 27, 2013.

The Defendant asserts that Plaintiff lacks statutory authority to implement estate recovery against the Estate of Ralph Wilson pursuant to MCL 400.112(g) and asserts Plaintiff's claim is invalid due to its failure to provide written notice of estate recovery at the time benefits were sought.

QUESTIONS PRESENTED

The questions presented in this case are as follows: (1) Did Plaintiff give Defendant proper notice of estate recovery; (2) If so, at what point in time was proper notice given; and (3) If proper notice was not given, is Plaintiff barred from recovery?

FINDINGS

The Court finds that proper notice of estate recovery was provided by the Michigan Department of Community Health to the decedent's representative Kimberle Kurdy on January 27, 2013.

This Court further finds that the same issue now before the Court was addressed recently in *Michigan Department of Community Health v. Estate of James Shanks*, by the

Honorable Jennie E. Barkey of Genesee County. This Court respectfully adopts the Genesee County Court's analysis that determined that proper notice of estate recovery was not provided to the Medicaid beneficiary at the time of their initial application, but notice was provided upon redetermination (reapplication for Medicaid benefits. Judge Barkey allowed estate recovery but only for the period of time after the written notice was provided. In the present case notice was provided on January 27, 2013, and , accordingly, the Court orders the following:


ORDER

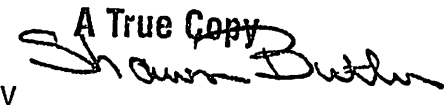
IT IS HEREBY ORDERED AND ADJUDGED that the Estate of Ralph E. Wilson Motion for Summary Disposition under MCR 2.116 (C)(10) and request for Sanctions is granted in part and the Michigan Department of Community Health Estate Recovery claim against the Estate of Ralph E. Wilson is allowed for the period commencing January 27, 2013 until Decedent's death on March 5, 2013.

IT IS FURTHER ORDERED AND ADJUDGED that the Personal Representative shall pay the amount due in accordance with the priority of claims set out in MCL 700.3805.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff's request for sanctions is denied.

This Order disposes of the last known claim and closes the case. MCR 2.602(A)(3).


Michelle A. Bianchi P39145
Probate Judge
Date Signed: 9-5-14

A True Copy

By Shawn Butler
Chief Deputy Register