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RECENT U.S. SUPREME COURT DECISION'S IMPACT ON PERSONAL INJURY AWARDS AND MEDICAID

Recently, the United States Supreme Court unanimously ruled that an Arkansas statute that requires Medicaid applicants to assign to the state the entirety of any personal injury settlement violates the federal Medicaid law's anti-lien provisions. The Supreme Court also ruled that the state only may recover from the portions of third-party awards allocated for medical expenses. In *Arkansas Department of Health and Human Services, et al. v. Ahlborn* (2006 LEXIS 3455, decided May 1, 2006), the Supreme Court considered the case of Heidi Ahlborn, a college student who sustained severe and permanent injuries as the result of a car accident. The Arkansas Department of Health Services (ADHS) paid providers \$215,645.30 on her behalf under the state's Medicaid program.

Ms. Ahlborn sued two alleged tortfeasors in Arkansas state court to recover damages for her injuries. She claimed damages for past and future medical costs, permanent physical injury, past and future pain, suffering and mental anguish, past loss of earnings and working time, and permanent impairment of the ability to earn in the future. ADHS was not named as a party, and ADHS was not formally notified of the suit; however, Ms. Ahlborn's attorney did keep ADHS informed regarding insurance coverage as information became available during the litigation. ADHS intervened in the lawsuit to assert a lien on any third-party recovery proceeds. The case was settled out of court for \$550,000, but the parties did not allocate the settlement between categories of damages. ADHS asserted a lien against the proceeds for \$215,645.30, the total amount that Medicaid had paid on Ms. Ahlborn's behalf.

Ms. Ahlborn filed an action in the U.S. District Court for the Eastern District of Arkansas, claiming that the lien violated the federal Medicaid laws

because satisfying the lien would deplete the compensation for injuries other than past medical expenses. The parties stipulated that Ms. Ahlborn's entire claim was reasonably valued at \$3,040,708.18, with the settlement being approximately one-sixth of that sum. The parties also stipulated that if Ms. Ahlborn's construction of federal law was correct, ADHS would only be entitled to \$35,581.47, the portion of the settlement that was reimbursement for medical expenses. The District Court held that the Arkansas law did not conflict with Federal law, and that ADHS was entitled to a lien for its full reimbursement. The Eighth Circuit reversed, and held that ADHS was entitled only to that portion of the judgment that was considered payment for medical care. The Supreme Court affirmed that ruling.

The Supreme Court analyzed the federal Medicaid laws, particularly with respect to the requirement for the state agency in charge of Medicaid to "ascertain the legal liability of third parties . . . to pay for care and services available under the plan." The state agency must also "seek reimbursement for such assistance to the extent of such legal liability." The Court said that the legal liability in question extends only to liability for medical expenses. The Court further said that the State of Arkansas had passed laws that, in effect, claim an entitlement to more than the portion of a judgment or settlement that constitutes payment for medical expenses. The state claimed the right to recover all of the costs it paid on a recipient's behalf. Under this theory, the state would receive all of a personal injury settlement or award leaving the injured party receiving nothing, even if the parties allocated damages to medical costs and other injuries, such as lost wages. The Court said that this statutory scheme conflicts with the federal law, and that ADHS's stipulation that \$35,581.47 of the settlement represents compensation for medical expenses limits the legal liability for medical care to that amount and limits ADHS's recovery.

The Supreme Court also held that the Arkansas statutory scheme violates the federal Medicaid anti-lien provision, which prohibits states from imposing liens "against the property of any individual prior to his death on account of medical assistance paid . . . on his behalf under the State plan." The Court said that Arkansas was attempting to attach or encumber the portion of the settlement that represented compensation for damages other than medical expenses. ADHS had attempted to characterize the remainder of the settlement as not being Ms. Ahlborn's "property," but that argument failed.

There is a lesson to be learned for use in future personal injury actions. One reason ADHS sought full reimbursement was to avoid the risk of recipients manipulating settlements by reducing allocations for medical expenses in order to avoid Medicaid repayment. The Supreme Court answered this argument by saying, "[T]he risk that parties to a tort suit will allocate away the State's interest can be avoided either by obtaining the State's advance agreement to an allocation or, if necessary, by submitting the matter to a court for decision." Personal injury attorneys will need to tread carefully in order to achieve the best results for their clients.

Oast & Hook can assist personal injury attorneys in analyzing the needs of their clients, and ensuring that the clients retain both their settlement or judgment proceeds, and their needs-based government benefits.

Announcements

Oast & Hook is pleased to announce that it is a sponsor for the 17th Annual Alzheimer's Education Conference to be held at Old Dominion University on June 7th and 8th. Oast & Hook will also be

presenting two workshops entitled “Legal Issues for Families Facing Alzheimer’s Disease” on June 7th and “Current Legal Issues – Competency Issues and the Law” on June 8th. For more information about this conference, please call the Alzheimer’s Association at 757-459-2405 or visit their website at www.alz.org.

Oast & Hook

Oast & Hook is an elder law firm. We represent older persons, disabled persons, their families, and their advocates. The practice of elder law includes estate planning, investment and insurance advice, estate and trust administration, powers of attorney, advance medical directives, titling of assets and designations of beneficiaries, guardianships, conservatorships, and public entitlements such as Medicaid, Medicare, Social Security, and SSI, disability planning, income tax planning and preparation, bill paying, account management and reporting, care management, and fiduciary services. We also handle litigation involving these issues, such as will contests and estate administration disputes. For more information about Oast & Hook, please visit our website at www.oasthook.com.

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