



## **Steve Leimberg's Estate Planning Email Newsletter - Archive Message #3262**

**Date: 23-Dec-25**

**From: Steve Leimberg's Estate Planning Newsletter**

**Subject: Marc Soss: Do Your State Statutes Permit  
Medicaid to Pursue Claims Against the Beneficiary of an  
Estate?**

“Every probate attorney should be aware how their state Medicaid statute defines the term ‘estate.’ States may at their option include in the definition of ‘estate’ the verbiage ‘any other real and personal property (and other assets) in which the decedent had any legal title or interest in at the time of death (to the extent of said interest).’ This includes assets conveyed to a survivor, heir or assign of the deceased through joint tenancy, tenancy- in- common, life estate, living trust or other arrangement.”

Marc Soss, J.D., LL.M., provides members with commentary on Montana Department of Public Health and Human Services v. Minta Y. Johnson and its application to a reach of Medicaid for reimbursement of funds paid on behalf of a decedent.

Marc Soss’ practice focuses on estate planning, probate and trust administration, and corporate matters in Sarasota & Manatee County Florida. Marc is a frequent contributor to LISI and has published articles in the Florida Bar, Rhode Island Bar, North Carolina Bar and National Contract Management Association magazine. Marc is also a retired United States Navy Supply Corps Officer.

Here is his commentary:

### **EXECUTIVE SUMMARY:**

Many state statutes limit the period for when a creditor may file a claim in a probate proceeding. This creditor claims period will typically also apply to a Medicaid claim for reimbursement. In Montana Department of Public Health and Human Services v. Minta Y. Johnson, DA 25-0240, 2025 MT276, the Montana Supreme Court addressed whether a Medicaid reimbursement action could be brought under § 53-6-167(2), MCA, a Montana state statute, after it had filed an untimely creditor’s claim under§ 72-3-803, MCA and the creditor claim period had expired.

## **COMMENT:**

Mrs. Pound (“Pound”) died intestate on April 4, 2023. During her lifetime, Pound received Montana Medicaid benefits in the total sum of \$5,360.89. On May 1, 2023, Minta Johnson (“Minta”), the sole heir, filed an application for an informal probate of Pound’s estate in the Eleventh Judicial District Court, Flathead County, and published a Notice to Creditors between May 12 - 26, 2023. The sole estate asset was Pound’s personal residence. On September 13, 2023, one day after the expiration of the four-month Montana creditor claims period, the Montana Department of Public Health and Human Services (“Department”) filed a claim against the estate. On March 28, 2024, the Probate Court issued an order denying the Department’s claim against the estate for Medicaid benefits paid on behalf of Pound. On April 30, 2024, the Probate Court approved the final accounting, distributing the remainder of the estate to Minta and noting that the probate Court had denied the Department’s Petition.

On May 1, 2024, the Department filed a complaint, based on § 53-6-167(2), MCA, in the Fourth Judicial District Court (“District Court”) against Minta to recover the Medicaid benefits paid on behalf of Pound. § 53-6-167(2), MCA, provides that the Department “may execute and present a claim against a person who has received property of the [Medicaid] recipient by distribution or survival.” The District Court dismissed the complaint with prejudice concluding that § 72-3-803, MCA, barred the Department’s claim because the Department failed to timely present a Notice of Creditor’s Claim in the probate proceeding and the issues Court were identical to those in the probate proceeding. The Department timely appealed the Order.

### Montana Medicaid Program

The Montana Medicaid program is a state and federally funded program, administered in accordance with Title XIX of the Social Security Act, which provides necessary medical services to eligible persons to protect persons who are most vulnerable and most in need. The Department has a statutory duty to recover Montana Medicaid benefits correctly paid to a recipient after the recipient’s death as a mechanism to help ensure the program remains adequately funded.

### Montana Statute § 53-6-167

Montana Statute § 53-6-167 provides an alternative cause of action against an heir who inherited assets from a Medicaid recipient, in addition to a claim against the estate.

It also defines “property of a deceased recipient received by distribution or survival” as “any real or personal property or other assets in which the recipient had any right, title, or interest immediately prior to the time of death, including but not limited to assets passing to one or more survivors, heirs, assignees, or beneficiaries of the deceased through joint tenancy, tenancy in common, right of survivorship, conveyance by the recipient subject to life estate, living trust, or other arrangement.” This provides the Department with greater flexibility to recover its Medicaid payments and help ensure that the Montana Medicaid program remains fiscally sound.

#### Arguments:

On appeal, Minta argued that: (i) §53-6-167, MCA, negates the procedural safeguards protecting an estate from untimely claims; and (ii) the claim is barred as the issue in the probate court and the current proceeding is identical as both concern the administration of a creditor’s claim in probate.

In response, the Department contends: (i) the issue in the probate proceeding was the timeliness of the creditor claim and not an objection to the claim; (ii) as a court of limited jurisdiction, the probate court lacked jurisdiction to adjudicate its claim under § 53-6-167(2); (iii) Minta acted as personal representative in the probate proceedings and appears in these proceedings in her individual capacity; and (iv) the statute provides the Department the ability to file a creditor’s claim in a probate proceeding or present a claim against an heir of a deceased Montana Medicaid recipient, or both, until the claim is satisfied in full.

In furtherance of its argument, the Department cited to the ruling by the Nevada Supreme Court in *State Dep’t of Human Res., Welfare Div. v. Est. of Ullmer*, 87 P.3d 1045 (2004). In *Ullmer*, the Nevada Supreme Court explained: (i) the government has a legitimate statutory interest in recovering the amount of correctly paid Medicaid benefits from a deceased Medicaid recipient’s estate, which includes the recipient’s ownership interest in property at the time of death; (ii) the estate arises from federal legislation mandating that states establish an estate recovery program in order to receive federal Medicaid funding. Estate recovery provisions were initiated in light of increased demands for Medicaid, which stemmed from the growth of the nation’s aging population; and (iii) Nevada’s “recovery statute

further the government's legitimate interest in recovering from a deceased Medicaid recipient's estate so that the government can help more people in need of assistance, the amount of benefits correctly paid."

### Supreme Court Analysis:

In reviewing the case, the Supreme Court noted that (i) to interpret the four-month statutory claims in § 72-3-803, MCA, as a bar against recovery under § 53-6-167(2), MCA, would defeat the plain language and substance of § 53-6-167, MCA, and hinder the Department's ability to fulfill its statutory duty to recover Medicaid payments correctly paid to a deceased recipient; (ii) Minta's argument regarding § 53-6-167, MCA, fails to appreciate the distinction between a claim against an estate of a deceased Medicaid recipient and a claim against a person who received "property from a deceased recipient's estate;" and (iii) Minta never objected to the actual expenses incurred and charged for the Medicaid benefits provided. In reaching its ruling, the Court focused on the issue of whether Minta was "a person who has received property of the recipient by distribution or survival for an amount equal to the recoverable medical assistance paid on behalf of the recipient."

### **CONCLUSION:**

The Montana State Supreme Court found that the Department, as a matter of public policy, has "a statutory duty to recover Medicaid benefits paid to a deceased recipient." The legislative intent behind § 53-6-167(2), MCA, was to create an alternative method for it to recoup recoverable medical assistance from "a person who has received property of the recipient by distribution or survival for an amount equal to the recoverable medical assistance paid on behalf of the recipient." Further, under § 53-6-167(2), MCA, the Department had a valid claim in the District Court against Minta for recoverable medical assistance paid to Pound and because Minta did not contest the underlying merits of the Department's claim in the probate proceeding she is precluded from doing so in the District Court. As a result, the Montana Supreme Court remanded the case back to the District Court to enter a judgment in the Department's favor for the amount of recoverable medical assistance that Minta received by distribution from Pound's estate.

**Note:**

Under 42U.S.C. 1396 p (b)(4)(B) the definition of "estate" for the recovery of Medicaid properly paid includes all real and personal property and other assets of a decedent as defined for purposes of state probate law. Additionally, states may at their option include in the definition of "estate" the verbiage "any other real and personal property (and other assets) in which the decedent had any legal title or interest in at the time of death (to the extent of said interest)." This includes assets conveyed to a survivor, heir or assign of the deceased through joint tenancy, tenancy-in- common, life estate, living trust or other arrangement. As a result, when a probate estate addresses a Medicaid Claim, it is important to review the specific verbiage of the applicable state statute to ensure that an alternative avenue for collection is not available. The Nevada statute referenced in Ulmer broadened the definition of "estate" to include "assets conveyed to a survivor, heir or assign of the deceased [Medicaid] recipient through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement."

HOPE THIS HELPS YOU HELP OTHERS MAKE A POSITIVE DIFFERENCE!

*Marc Soss*