

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4828-13T1

IN THE MATTER OF THE
ESTATE OF TRACY SOLIVAN

Argued September 21, 2015 - Decided October 21, 2015

Before Judges Lihotz, Fasciale and Higbee.

On appeal from Superior Court of New Jersey,
Chancery Division, Hudson County, Docket No.
221681.

John J. Sheehy argued the cause for
appellant Estate of Tracy Solivan (Sheehy &
Sheehy, attorneys; Mr. Sheehy, on the
brief).

Jennifer L. Cavin, Deputy Attorney General,
argued the cause for respondent Department
of Human Services, Division of Medical
Assistance and Health Services, Division of
Developmental Disabilities (John J. Hoffman,
Acting Attorney General, attorney; Melissa
H. Raksa, Assistant Attorney General, of
counsel; Ms. Cavin, Deputy Attorney General,
on the brief).

Michael J. Sluka, Chief Welfare Attorney,
attorney for respondent County of Hudson,
joins in the brief of respondent Department
of Human Resources.

PER CURIAM

This matter arises in the course of the administration of
the Estate of Tracy Solivan (the Estate). The Division of
Medical Assistance and Health Services (DMAHS) and the Division

of Developmental Disabilities (DDD) (collectively, the Divisions), two agencies within New Jersey's Department of Human Services, asserted claims against the Estate for reimbursement of benefits previously paid to Tracy Solivan (decedent). The Estate moved to discharge the Divisions' claims, arguing the claims were unsupported and prevented distribution of the assets to estate beneficiaries. In a written opinion, the trial judge disagreed and upheld the claims as due and payable from decedent's assets. The Estate moved for reconsideration, which was denied. Final approval of the administrator's accounting, which included payment of administrative costs and liens in final settlement of the Estate, was ordered. The Estate challenges these three orders.

We have considered the arguments on appeal in light of the record and applicable law. We affirm.

The facts taken from the record are not disputed. At birth, decedent suffered injury caused by the medical negligence of employees of the Margaret Hague Maternity Hospital, which was a Hudson County (the County) owned and operated institution.¹ Decedent was afflicted with developmental and physical delays

¹ The Margaret Hague Maternity Hospital closed in 1979. See New Jersey City University, Jersey City Past and Present, http://www.njcu.edu/programs/jchistory/pages/m_pages/margaret_hague_maternity_hospital.htm (last viewed Sept. 21, 2015).

requiring specialized care. In her first year, decedent was placed in the North Jersey Training Center, later renamed the North Jersey Developmental Center.

Decedent's parents initiated an action against the County resulting in a court approved settlement and judgment on August 24, 1979. Pursuant to the terms of settlement, decedent received \$172,400, to be held in an account by the Hudson County Surrogate, until she reached the age of majority, determined competent, or upon court order. See R. 4:48A(b) (delineating treatment of funds paid into court for mentally handicapped persons).² Despite appointment of a guardian, use of the funds was subject to the court's further orders. An additional provision contained in the judgment stipulated the County was "to pay its share of the costs for the care and maintenance of [decedent] at the North Jersey Training Center."³

On February 9, 1984, decedent was transferred from the North Jersey Training Center to the Woodbridge Developmental Center. She received functional services subsidized by DDD.

² The 1979 judgment references N.J.S.A. 3A:7-14.1, which has been repealed, but which is the source of what is now N.J.S.A. 3B:15-16, the statute referenced in R. 4:48A(a). See In re Conda, 104 N.J. 163, 167 (1986).

³ The judgment also awarded decedent's parents \$72,600 for counsel fees and out-of-pocket expenses associated with decedent's care.

From 2002 to 2012, decedent also received Medicaid benefits paid through DMAHS, the agency that administers New Jersey's federally funded Medicaid program. These services and benefits continued until her death in 2012.

Following her eighteenth birthday, a proceeding determined decedent was an incapacitated person and her mother was appointed her legal guardian. On September 12, 2002, a co-guardian was named and the Hudson County Surrogate was ordered to transfer all funds held in the decedent's name for administration by the co-guardians. No express restrictions or court approval requirements for the use of the funds were noted. The guardians transferred the funds to an investment account.

Over time, as needed, guardians were replaced and one accounting was ordered. On April 14, 2012, decedent died intestate, holding personal property in excess of \$600,000. The co-guardians filed an order to show cause and a verified complaint to issue a final guardianship accounting and requested appointment as co-administrators of decedent's estate.

DDD filed a statutory lien against the assets of the Estate, asserting she was not qualified for State subsidy to pay for those services, and seeking \$3,538,561.72 in reimbursement of the cost of services provided to decedent while attending the Woodbridge Developmental Center. DMAHS also filed a claim

seeking repayment of \$2,152,313.11, asserting decedent was incorrectly paid Medicaid benefits because she had available resources once the funds were released from the County Surrogate, making her financially ineligible to receive Medicaid.

The Estate moved to discharge the Divisions' respective claims. Following oral argument, the judge issued a written opinion, filed on January 29, 2014, upholding the validity of the Divisions' claims. The judge determined DMAHS was entitled to reimbursement for incorrectly paid Medicaid benefits paid at a time decedent held "available" funds to satisfy her medical costs, making her ineligible to receive Medicaid subsidies. Further, she concluded DDD had a valid statutory lien, pursuant to N.J.S.A. 30:4-80.1 and N.J.A.C. 10:46D-2.1(f), because decedent had means to pay for functional services provided by the State. The Estate's motion for reconsideration was denied. An order approving payment of the administrator's accounting, settlement, and disbursement of the Estate, including payment of fees and costs, was entered. The Estate's appeal ensued.⁴

On appeal, the Estate challenges the trial judge's interpretation of the applicable statutes cited to support the

⁴ The trial court stayed the order for distribution pending appeal.

Divisions' claims. In our review, we accord no deference to the judge's "interpretation of the law and the legal consequences that flow from established facts[,]" rather our review is de novo. Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 382-82 (2010) (citations and internal quotations marks omitted).

When reviewing statutory requirements, we must determine and effectuate the intent in adopting legislation by evaluating the language used and statutory objectives to be achieved. Redd v. Bowman, __ N.J. __, __ (2015) (slip op. at 28); see also N.J.S.A. 1:1-1 ("In the construction of . . . statutes[,]. . . words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature[,]. . . be given their generally accepted meaning, according to the approved usage of the language.").

"'Construction of any statute necessarily begins with consideration of its plain language.'" Mun. Council v. James, 183 N.J. 361, 370 (2005) (quoting Merin v. Maqlaki, 126 N.J. 430, 434 (1992)). We give plainly written statutes their "ordinary meaning, absent a legislative intent to the contrary," with the understanding the language must be construed "in a fashion consistent with the statutory context in which it appears." Ibid. (citations and internal quotation marks omitted). See also Shelton v. Restaurant.com, Inc., 214 N.J. 419, 428-29 (2013).

If our review finds the statutory provisions are ambiguous, we are free to examine extrinsic aids, such as legislative history, to ascertain the Legislature's intended meaning. Shelton, supra, 214 N.J. [at] 429. In interpreting two seemingly conflicting sections of the same statute, we must read the provisions in pari materia, construing them "together as a unitary and harmonious whole." Am. Fire & Cas. Co. v. N.J. Div. of Taxation, 189 N.J. 65, 80 (2006) (citations and internal quotation marks omitted). "Every reasonable construction should be applied" to assure each section is meaningful. Twp. of Mahwah v. Bergen Cnty. Bd. of Taxation, 98 N.J. 268, 281, cert. denied, 471 U.S. 1136, 105 S. Ct. 2677, 86 L. Ed. 2d 696 (1985). Finally, we keep in mind "every word in a statute has meaning and is not mere surplusage." Jersey Cent. Power & Light Co. v. Melcar Util. Co., 212 N.J. 576, 587 (2013) (citations and internal quotation marks omitted).

[Timber Glen Phase III, LLC v. Twp. of Hamilton, __ N.J. Super. __, __ (App. Div. 2015) (slip op. at 8-9).]

All parties agree DMAHS's Medicaid claim seeking repayment of improvidently awarded benefits has priority over DDD's lien. The claim is premised on DMAHS's position decedent held available assets in excess of the permissible threshold to qualify for subsidies from 2002 to 2012. The Estate argues the personal injury settlement released to decedent's guardian was not an available asset disqualifying decedent from Medicaid benefits. The Estate also maintains DMAHS's assertions violate the anti-lien provisions of the federal Medicaid Act.

The federal Medicaid Act, Title XIX of the Social Security Act, 42 U.S.C.A. §§ 1396 to 1396w-5, provides medical care for indigent individuals at public expense. Arkansas Dep't of Health & Human Servs. v. Ahlborn, 547 U.S. 268, 275, 126 S. Ct. 1752, 1758, 164 L. Ed. 2d 459, 468-69 (2006); L.M. v. Div. of Med. Assistance & Health Servs., 140 N.J. 480, 484 (1995).

It is an optional cooperative program in which "[t]he Federal Government shares the costs . . . with States that elect to participate in the program." Atkins v. Rivera, 477 U.S. 154,] 156-57, 106 S. Ct. [2456,] 2458, 91 L. Ed. 2d [131,] 137 [(1986)]. States that choose to participate are required to comply with Title XIX of the Social Security Act, and the regulations adopted by the Secretary of Health and Human Services. 42 U.S.C.A. § 1396a; Atkins, supra, 477 U.S. at 157, 106 S. Ct. at 2458; 91 L. Ed. 2d at 137.

[Mistrick v. Div. of Med. Assistance & Health Servs., 154 N.J. 158, 165-66 (1998) (first alteration in original).]

"Participating states must develop a plan including 'reasonable standards . . . for determining eligibility for and the extent of medical assistance . . . consistent with the objectives' of the Medicaid program." R.S. v. Div. of Med. Assistance & Health Servs., 434 N.J. Super. 250, 258 (App. Div. 2014) (quoting L.M., supra, 140 N.J. at 484 (quoting 42 U.S.C.A. § 1396a(a)(17)(A))).

New Jersey elected to participate by adopting the New Jersey Medical Assistance and Health Services Act, N.J.S.A.

30:4D-1 to -19.5, governing the implementation of and assuring the State's maximum federal participation in Medicaid funds. N.E. v. N.J. Div. of Med. Assistance & Health Servs., 399 N.J. Super. 566, 572 (App. Div. 2008). The Department of Human Services, through DMAHS, is the sole agency charged with administering the program. N.J.S.A. 30:4D-4, -5. As authorized by the Legislature, N.J.S.A. 30:4D-7, the Commissioner has promulgated comprehensive regulations to administer the program. See N.J.A.C. 10:71-1.1 to -9.5.

The economic requirements of the program restrict benefits to those with available resources "which could be converted to cash to be used for his or her support and maintenance." N.J.A.C. 10:71-4.1(b). A resource is deemed "available" to an individual when:

1. The person has the right, authority or power to liquidate real or personal property or his or her share of it;
2. Resources have been deemed available to the applicant . . . ; or
3. Resources arising from a third-party claim or action are considered available from the date of receipt by the applicant/beneficiaries, his or her legal representative or other individual acting on his or her legal behalf in accordance with the following definition and provisions.
 - i. Definition of "availability of resources in third-party situations": In third-party

situations in which applicants/beneficiaries have brought an action or made a claim against a third party who is or may be liable for payment of medical expenses related to the cause of the action or claim, funds are considered available or countable at the moment of receipt by the applicant/beneficiary, his or her legal representative, guardian, relative or any person acting on the applicant's/beneficiary's behalf. Such funds should be considered available or countable at the earliest date of receipt by any of the aforementioned entities.

[N.J.A.C. 10:71-4.1(c)(1)-(3).]

Few assets are excluded when determining the availability of resources to meet the eligibility threshold for Medicaid benefits. Among the resources excluded are a house occupied as a principal residence, one automobile, personal effects and household goods not to exceed \$2000, the cash surrender value of life insurance up to \$1500, and certain burial funds. N.J.A.C. 10:71-4.4(b)(1), (2), (3), (4), (9). Currently, the available resource threshold for an individual to receive Medicaid benefits is \$2000. N.J.A.C. 10:71-4.5(c).⁵

If Medicaid benefits are incorrectly paid, DMAHS has a duty to recoup those funds. See N.J.S.A. 30:4D-7(i) (requiring DMAHS

⁵ For a married couple, the threshold is \$3000. N.J.A.C. 10:71-4.5(b).

"[t]o take all necessary action to recover the cost of benefits incorrectly provided to or illegally obtained by a recipient"). The statute permits recovery of incorrect payments from an estate or "any other party or parties whose action or inaction resulted in . . . incorrect or illegal payments." Ibid.

DMAHS filed its claim against the Estate asserting funds became available for decedent's use, within the meaning of the regulation, upon the County Surrogate's release of the settlement proceeds to her guardians. The amount of the funds exceeded the \$2000 threshold. Thus, decedent was ineligible to receive Medicaid, and all benefits paid in error from 2002 to 2012 are subject to recoupment.

Relying on Essex County Division of Welfare v. O.J., 128 N.J. 632 (1992), the Estate challenges DMAHS's determination of ineligibility, rejecting the settlement funds were "available" to decedent.

In O.J., the Court examined "whether and to what extent a minor's personal-injury award deposited into a court-supervised trust account may be considered in determining eligibility of that child's family to receive Aid to Families with Dependent Children (AFDC)[,]" a federal program administered by the Essex County Division of Welfare (ECDW). O.J., supra, 128 N.J. at 635. The plaintiff parents, on behalf of their minor children

who recovered personal injury awards deposited into court-supervised trust account with the County Surrogate, challenged the ECDW's application of regulations that purportedly required they draw upon the funds, prior to their children being considered eligible for AFDC benefits. Id. 635-36. The Court noted:

Under federal law, a personal-injury award, if "available" to a recipient, is required to be treated as income for AFDC-eligibility purposes except for that portion of an award "earmarked and used for the purpose for which it is paid, i.e., monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, etc."

[Id. at 638 (quoting 45 C.F.R. § 233.20(a)(3)(ii)(F)).]

The Court advised that by "choosing to participate in a federally-supported assistance program, New Jersey must comply with the terms of federal legislation and regulations." Ibid. "[U]nder federal law a personal-injury award, to the extent not 'earmarked and used for the purpose for which it is paid,' is treated as income for purposes of AFDC eligibility" Id. at 639. To determine whether the minor's funds held by the County Surrogate were available as defined by federal law, the court concluded "restricted trust funds completely under a court's control may not be considered for eligibility purposes." Id. at 640. Accordingly, the identified funds were not

available "because the supervising court alone controls whether they may be released." Id. at 641.

The Court held "the compensatory nature of minors' tort awards and the protection afforded such awards before a child reaches majority compel the conclusion that a child's personal-injury settlement intended to compensate for a child's loss is not 'available' in the calculation of AFDC availability." Id. at 643. The regulation stating otherwise was deemed invalid. Id. at 644.

In a final note, the Court stated:

Although not essential to our resolution of these appeals, we note that even if the federal government ultimately were to determine that minors' personal-injury settlements are "available" for AFDC-eligibility purposes, such funds could not be classified as "available" unless the monies had been released from the trust funds. Because the supervising court controls invasion of a minor's trust account, R. 4:48A(c), the funds could be classified as "available" only to the extent the supervising court grants a withdrawal petition.

[Ibid.]

Here, the Estate argues the trial judge erroneously concluded the funds were "available" because the 2002 order released the funds from the County Surrogate's control without restriction on use. The Estate postulates court approval was

mandated by N.J.S.A. 3B:12-36, which limits a guardian's fiduciary responsibility, providing:

If a guardian has been appointed as to the person of a minor or an incapacitated person, the court shall have authority over the ward's person and all matters relating thereto; and if a guardian has been appointed to the estate of a minor or an incapacitated person, the court shall have authority over the ward's estate, and all matters relating thereto.

Additionally, the Estate maintains a court's parens patriae interest is not eliminated simply because a guardian is appointed. Matter of Mason, 305 N.J. Super. 120, 129-31 (Ch. Div. 1997). Moreover, a court retains the authority to limit a guardian's power. Id. at 129. We are not persuaded.

The court does not retain overarching power to manage the assets of a ward after the assets are placed in a guardian's care. Importantly, any limitation upon powers conferred upon a guardian "shall be so stated in certificates of letters of guardianship thereafter issued." N.J.S.A. 3B:12-37. Certainly, the court can adjudicate claims of mismanagement or misappropriation, but absent stated restrictions, discretionary use of funds to provide for a ward's health, education, support and comfort is not restricted. See N.J.S.A. 3B:12-57(f) (outlining powers and duties of guardians, stating, "guardian[s] of the person of a ward shall exercise authority over matters

relating to the rights and best interest of the ward's personal needs"). Guardians are free to exercise their discretion without the need to seek prior court approval and determine how best to manage the ward's property. Ibid.

Here, unlike O.J., the funds were not in a court supervised trust or restricted account. In fact, DMAHS's claim for repayment of benefits underscores this difference in treatment as no claim was presented for the period decedent's monies were held by the County Surrogate.

Further, while the September 2002 order transferring the funds from the County Surrogate's account pursuant to N.J.S.A. 3B:12-57(f)(9), it specifically allowed the guardians' management of decedent's assets "in the exercise of the guardian's reasonable discretion . . . without court order" Thus, no limit on the use of the funds or mandate to use the trust were imposed. The record contains no proof the funds were subject to a comparable restrictive instrument. Further, the facts show decedent's guardians took control of the funds, invested the money as they deemed appropriate, and exercised discretion to release sums for decedent's needs. Although the court required periodic accountings, it did not limit or restrict spending for decedent's use.

In her review of this matter, we conclude the Chancery judge correctly applied the law and determined the funds were released to decedent's guardians without court restriction on their use for decedent.

The Estate next asserts it was error to allow DMAHS's claim, which violates the anti-lien provision of the Medicaid Act. 42 U.S.C.A. § 1396p(a)(1). We disagree.

The federal Medicaid Act's anti-lien provision states: "No lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State [Medicaid] plan[.]" 42 U.S.C.A. § 1396p(a)(1). An exception permits liens "pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual[.]" 42 U.S.C.A. § 1396p(a)(1)(A). The United States Supreme Court has held this "third party liability" provision precludes attachment of tort settlement proceeds in a tort judgment that are not "designated as payments for medical care." Ahlborn, supra, 547 U.S. at 284, 126 S. Ct. at 1763, 164 L. Ed. 2d at 474. Therefore, any portion of a tort recovery not designated as payment for medical expenses will be subject to the anti-lien provision and may not be attached for reimbursement of state benefits. Id. at 284-85, 126 S. Ct. at 1763, 164 L. Ed. 2d at 474.

More recently, in Wos v. E.M.A., 568 U.S. ___, 133 S. Ct. 1391, 1395, 185 L. Ed. 2d 471, 478-79 (2013), parents of a child suffering birth injuries recovered significant sums in settlement of their tort claims and successfully challenged a North Carolina statute imposing an irrebuttal presumption withholding up to one-third of the recovery as attributable to medical expenses, subject to reimbursement for previously paid Medicaid benefits. Ibid. The United States Supreme Court held 42 U.S.C.A. § 1396p(a)(1) pre-empted the state statute and was unenforceable because the arbitrary one-third standard allowed recovery from a beneficiary's tort settlement from funds not designated for medical care. Id. at 1402, 185 L. Ed. 2d at 486-87 (citing Ahlborn, supra, 547 U.S. at 284, 126 S. Ct. at 1763, 164 L. Ed. 2d at 473-74).

In this matter, the Estate asserts DMAHS's claim for reimbursement also attempts to override 42 U.S.C.A. § 1396p(a)(1) lien preclusion. The Estate suggests because the judgment awarding decedent settlement did not allocate sums for reimbursement of medical costs, DMAHS is barred from recovering from any portion of decedent's settlement. We disagree.

DMAHS does not seek a lien on decedent's recovery for benefits paid prior to entry of the personal injury settlement. Rather, it is required to recoup benefits incorrectly paid to a

decedent at a time she was not eligible to receive those benefits. DMAHS's claim against decedent's estate does not implicate the public policy considerations undergirding the anti-lien statute, which is designed to protect sums for future medical and other care needs of the injured party. See Ahlborn, supra, 547 U.S. at 284, 126 S. Ct. at 1763, 164 L. Ed. 2d at 473-74. See also 42 U.S.C.A. § 1396p(a)(1) (precluding a lien imposed "prior to [an individual's] death"). Accordingly, the statute does not preclude a lien imposed on a decedent's estate for "benefits incorrectly paid on behalf of such individual[.]" 42 U.S.C.A. § 1396p(a)(1)(A).

Upholding DMAHS's lien, which has priority, N.J.S.A. 30:4D-7.2(d), obviates the need to review DDD's claim because the Estate's limited available assets are insufficient to meet both claimants.⁶ We add these brief comments.

DDD, which provides public funding for services and support for mentally disabled individuals to achieve independent living, subsidized functional services rendered to decedent from 1984 to

⁶ If an estate's assets are insufficient to pay all claims, payment shall be made as follows: "a. Reasonable funeral expenses; b. Costs and expenses of administration; c. Debts for the reasonable value of services rendered to the decedent by the Office of the Public Guardian for Elderly Adults; d. Debts and taxes with preference under federal law or the laws of this State[.]" N.J.S.A. 3B:22-2(a)-(d).

2012 at the Woodbridge Developmental Center. The State bears the cost of institutional care for individuals unable to pay that expense, N.J.S.A. 30:4-69.⁷ Eligibility to receive subsidized benefits is determined pursuant to an "ability to pay" formula, published annually by the Department of Treasury. N.J.S.A. 30:4-60(b). This formula examines whether a "person with a developmental disability has sufficient income, assets, resources . . . to pay for the person's maintenance . . . or is able to make any payment towards the person's maintenance" Ibid.

When the costs of institutionalize care are borne by the State, a broad statutory lien attaches to a recipient's property under N.J.S.A. 30:4-80.1, which provides:

Every institution or other residential service maintained in whole or in part by State or county funds, which provides inpatient care, supervision and treatment for persons with developmental disabilities, shall have a lien against the property of a person receiving functional services from that institution or service for the total cost of the care and maintenance of the person in the institution at the per capita cost rate of maintenance fixed in accordance with law. The lien shall also attach to the

⁷ Prior to July 1, 1991, the statute required contribution by the State and the county. Cnty of Camden v. Waldman, 292 N.J. Super. 268, 274-76 (App. Div. 1996), certif. denied, 149 N.J. 140 (1997). Statutory amendments eliminated the counties responsibility to share state facility costs for the developmentally disabled. Id. at 276-77.

real and personal property of any person chargeable by law with the support and maintenance of the person Liens under this section . . . shall have priority over all unrecorded encumbrances

Further, an individual remains "responsible to repay the full cost of care if at some future point the resources become available to do so. For example, the Division may seek to recover the full costs of care when an individual comes into an inheritance." N.J.A.C. 10:46D-2.1. Finally, an individual's estate or person responsible for the patient's support may also be liable for payment. N.J.S.A. 30:4-74.


For the reasons discussed above, the September 2002 unrestricted release of funds from the County Surrogate to decedent's guardians provided decedent with an ability to pay the costs of DDD services and triggered the statutory right of recoupment under N.J.A.C. 10:46D-2.1(f).

The Estate's suggestion that DDD's claim must be set aside because the obligation rests with Hudson County is unavailing. We fail to understand how the judgment's provision requiring Hudson County "to continue to pay its share of the costs for the care and maintenance of [decedent] at the North Jersey Training Center[,]" defeats DDD's statutory claim. The State was not party to judgment and the County's liability, if any, is not before us on appeal.

In conclusion, we find no basis to interfere with the legal conclusions of the Chancery judge, who upheld the Divisions' claims against the funds held by decedent's estate. Also, we conclude the judge did not abuse her discretion in denying reconsideration. Palombi v. Palombi, 414 N.J. Super. 274, 288-89 (App. Div. 2010). Finally, no separate arguments are advanced directed to perceived errors in the order finalizing administration of the Estate. Any additional claims not specifically addressed were found to lack sufficient merit to warrant discussion in our opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION