STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0494

In re the Estate of: Raymond Deforest Trahan, Deceased.

Filed October 17, 2022
Affirmed
Johnson, Judge

Rice County District Court
File No. 66-PR-18-1421

John L. Fossum, Rice County Attorney, Sean R. McCarthy, Assistant County Attorney, Faribault, Minnesota (for appellant Rice County Social Services)

Laura J. Zdychnec, Northwoods Law Group, P.A., Minneapolis, Minnesota (for respondent personal representative)

Considered and decided by Johnson, Presiding Judge; Larson, Judge; and John Smith, Judge.*

NONPRECEDENTIAL OPINION

JOHNSON, Judge

During the last eight years of his life, Raymond Deforest Trahan received services from Rice County pursuant to the state's Medical Assistance program. After Trahan died, the county asserted a claim against his estate in the amount of $158,384.35, which the county alleged was the amount that was spent to provide services for him. The district court denied the county's claim on three grounds. We conclude that the county's claim is

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

barred by the fact that, when Trahan applied for benefits, the county violated federal law by not giving him notice that, after his death, the county would seek to recover from his estate the costs of capitation payments made on his behalf. Therefore, we affirm.

FACTS

In May 2010, Trahan began receiving Medical Assistance (MA) benefits through Rice County. The benefits he received were limited to housekeeping services, delivery of meals, and bi-monthly nurse visits. The benefits were provided through the Elderly Waiver (EW) program, which funds home- and community-based services for persons of age 65 or older who require the level of care provided in a nursing home but who choose to live in the community. *See* Minn. Stat. § 256S.05 (2020). Services provided through the EW program may "go beyond what is available through Medical Assistance" and can include performance of chores, home-delivered meals, skilled nursing, or "specialized equipment and supplies." Minn. Dep't of Human Servs., *Community-Based Services Manual, Waiver Programs, Elderly Waiver* (2022).[1] Rice County made arrangements with UCare, a managed-care organization, for the provision of EW services to Trahan.

While he received the above-described services, Trahan lived independently and remained relatively active. He drove himself to medical appointments, shopped for groceries, visited friends, and performed daily activities such as bathing, toileting, and

[1]https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=ID_000856 [https://perma.cc/8P8P-8D4K].

eating without assistance. He worked as a manager of an all-terrain vehicle park, which required him to maintain the facility's grounds and to monitor park users on a daily basis.

Trahan received MA benefits until his death in May 2018 at the age of 75. In June 2018, his daughter, Lisa Evert, the personal representative of his estate, commenced a probate action. In September 2018, the county filed a claim against Trahan's estate in the amount of $158,384.35, which the county described as "Medical Assistance paid on behalf of" Trahan. The county's claim was based solely on a 19-page, 487-line claims-history document, which bears letter and number codes, abbreviated descriptions of broad categories of services, dates, and dollar amounts. In October 2018, Evert's attorney sought additional information from the county about the claims-history document. As far as the record reveals, the county did not respond. In December 2018, the county petitioned the district court for allowance of its claim. Evert's attorney again sought additional information from the county about its claim, and the county responded by stating that it could not provide any additional information. Evert objected to the claim.

The parties agreed to submit the matter to the district court with written materials, apparently without a hearing. As its sole exhibit, the county submitted the 19-page document, which it had received from the Minnesota Department of Human Services (DHS). Evert submitted several pieces of evidence. She submitted two care plans prepared by county social workers in 2015 and 2017. The 2015 care plan indicated that Trahan would receive housekeeping services, nurse visits, and case-management services, with a total cost of $499.02 per month. Similarly, the 2017 care plan indicated that Trahan would receive housekeeping services, home-delivered meals, nurse visits, and case-management

and care-coordination services, with a total cost of $681.30 per month. Evert also submitted a seven-page document that purported to show that UCare made payments that totaled only $25,963.64 for her father's care. In addition, Evert introduced two affidavits executed by her brother and herself that collectively tended to prove that, before Trahan accepted the county's services, a county social worker assured him that neither he nor his estate would be charged for the costs of the services.

In May 2019, the district court issued an order in which it denied the county's claim for two reasons. First, the district court concluded that the EW benefits received by Trahan had not been correctly paid by the county on the ground that Trahan was ineligible for EW benefits because he did not require a nursing-facility level of care. Second, the district court concluded that the county did not prove its claim by a preponderance of the evidence because its sole piece of evidence—the 19-page claims-history document—lacked specificity and credibility. The district court explained that there were "substantial discrepancies between the county's claimed charges, the county's care plans that detailed the agreed-to services, and the UCare-generated list of payouts" and that it was "impossible to divine from the county *why* the services were charged."

The county appealed. This court concluded that the district court erred by ruling that the costs of EW benefits had not been correctly paid by the county. *In re Estate of Trahan*, No. A19-1020, 2020 WL 525713, at *2 (Minn. App. Feb. 3, 2020). This court also concluded that the district court erred by ruling that the county had not proved the total amount paid for the services provided to Trahan and remanded to the district court "to reexamine the record in light of this conclusion." *Id.* In addition, this court concluded that

the district court erred by not fully resolving Evert's argument that Trahan was misled when he accepted the services offered by the county, and this court remanded that issue so that the district court could fully resolve it. *Id.* at *3.

On remand, the parties again submitted the dispute to the district court by filing exhibits and memoranda of law. The county introduced more evidence on remand than it had introduced during the first proceeding. In addition to the 19-page claims history, the county submitted an affidavit of a manager of the DHS Special Recovery Unit, who stated that, because Trahan received MA benefits through a managed-care organization, the state made "capitation" payments, which are similar to insurance premiums, on his behalf. The DHS manager also stated that the federal agency that regulates state Medicaid programs requires states to recover from the estates of persons who received certain services "that portion of the capitation payment that is attributable to the recoverable services." The DHS manager further explained the items included in the county's claims-history exhibit and stated that the document "accurately reflects the recoverable Medical Assistance expenditures in this case." The county also submitted letters from an independent auditor that established the "capitation rates paid to Minnesota public programs managed-care organizations that are to be recovered from a deceased individual's estate following utilization of certain long term supports and services after the age of 55." The county argued in its memorandum of law that, because Trahan had received MA benefits through a managed-care organization, a portion of the capitation payments made to UCare for his benefits are recoverable from his estate.

In response to the county's evidence, Evert submitted a supplemental affidavit and one additional exhibit. She submitted a memorandum of law in which she asserted three arguments in opposition to the county's claim. First, she argued that to allow the county's claim against the estate would violate Trahan's right to due process on the ground that, before he agreed to accept services, he was misled to believe that neither he nor his estate would be required to pay for the services. Second, she argued that the county violated federal law by not giving Trahan specific notice that the county would seek to recover capitation payments from his estate. Third, she argued that the county did not prove the validity and amount of its claim by a preponderance of the evidence.

In February 2022, the district court filed an order in which it denied the county's claim against the estate for each of the reasons asserted by Evert. The county appeals.

DECISION

The county argues that the district court erred by denying its claim. The county makes four arguments. First, the county argues that the district court erred by concluding that the county did not prove the validity and amount of its claim by a preponderance of the evidence. Second, the county argues that the district court erred by concluding that Trahan's due-process rights were violated on the grounds that Evert does not have standing to assert Trahan's right to due process and that his right to due process was not denied. Third, the county argues that the district court erred by applying the doctrine of equitable estoppel to preclude the county from proving its claim. Fourth, the county argues that the district court erred by considering whether the benefits were correctly paid.

We note that the county's first and second arguments challenge the district court's first and third reasons for its decision. But the county has not challenged the district court's second reason, which aligns with Evert's second argument to the district court—that the county did not give Trahan the notice required by federal statutory and administrative law. The district court's second reason is, by itself, an independent and sufficient basis for its order and judgment. By not challenging the district court's second reason for ruling in Evert's favor, the county effectively has forfeited its appeal. We nonetheless will review the legal and factual bases of the district court's second reason to determine whether it is proper.

A.

Before considering the district court's second reason for its decision, we provide some background legal principles concerning the government programs implicated by the county's claim.

Medicaid "is a cooperative federal-state program." *In re Schmalz*, 945 N.W.2d 46, 50 (Minn. 2020) (citing *Atkins v. Rivera*, 477 U.S. 154, 156-57 (1986)). Its purpose is to assist individuals "whose income and resources are insufficient to meet the costs of necessary medical services." 42 U.S.C. § 1396-1 (2018); *see also* Minn. Stat. § 256B.01 (2020). A state's participation in the Medicaid program is voluntary. *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 502 (1990); *Schmalz*, 945 N.W.2d at 50. If a state elects to participate in the Medicaid program, the state must comply with federal law. *Wilder*, 496 U.S. at 502; *Schmalz*, 945 N.W.2d at 50.

In Minnesota, the Medicaid program is called "Medical Assistance" or "MA" and is administered by the DHS through county human-services agencies. Minn. Stat. § 256B.01, .02, .04, subd. 1 (2020). DHS is required by state statute to "[c]ooperate with the federal Centers for Medicare and Medicaid Services in any reasonable manner as may be necessary to qualify for federal aid in connection with the medical assistance program." Minn. Stat. § 256B.04, subd. 4.

Under federal law, a state participating in the Medicaid program is required to submit its plan to the federal government for approval. 42 U.S.C. § 1396-1; *In re Estate of Barg*, 752 N.W.2d 52, 58 (Minn. 2008). Each state is required to give its "assurance that [its plan] will be administered in conformity with the specific requirements of title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department." 42 C.F.R. § 430.10 (2021). DHS has an approved plan, which "serves as a contractual agreement between the state and the federal government." Minn. Dep't of Human Servs., *Minnesota's Medicaid (Title XIX) and CHIP (Title XXI) State Plans*.[2]

Federal law "authorizes states to contract with private managed-care organizations . . . to deliver Medicaid benefits and services to eligible persons." *Getz v. Peace*, 934 N.W.2d 347, 356 (Minn. 2019) (citing 42 U.S.C. § 1396u-2(a)(1)(A) (2012)). Managed-care organizations "provide or arrange for services for Medicaid enrollees in exchange for capitation payments." *Id.* at 356-57 (citing 42 U.S.C. § 1396u-2(a)(1), (f)). The term "capitation" is defined by a state administrative rule to mean "a method of payment for

[2]https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/minnesota-health-care-programs/spa.jsp [https://perma.cc/9NYW-S33W].

health services that involves a monthly per person rate paid on a prospective basis to a health plan," *i.e.*, a managed-care organization. Minn. R. 9500.1451, subp. 4 (2021). The monthly per-person rate is established by the commissioner of DHS. Minn. Stat. § 256B.69, subd. 5 (2020); *see also Getz*, 934 N.W.2d at 356 n.9 (citing Minn. Stat. § 256B.69, subds. 5, 5b, 5f, 6, 9d (2012)). DHS contracts with managed-care organizations through its Prepaid Minnesota Health Care Program, which includes Minnesota Senior Health Options. *See* Minn. Stat. § 256B.035 (2020); *see also* Minn. Dep't of Human Servs., *Minnesota Health Care Programs Managed Care Manual*, introduction (2021).[3] A person "who is enrolled in a managed care organization is not eligible to receive county-administered fee-for-service elderly waiver services." Minn. Stat. § 256S.05, subd. 5 (2020).

Federal law requires states to seek to recover Medicaid expenses from the estates of persons who received Medicaid benefits during their lifetimes. 42 U.S.C. §§ 1396a(a)(18), 1396p(b)(1)(B)(i) (2018). Estate-recovery programs allow "money paid to qualified individuals for health care purposes" to "be recovered and reused to help other similarly situated persons." *In re Estate of Turner*, 391 N.W.2d 767, 770 (Minn. 1986). In Minnesota, a county that administers MA benefits must file a claim against the estate of a person who "was 55 years of age or older and received medical assistance services that consisted of nursing facility services, home and community-based services, or related

[3]https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=DHS16_145397 [https://perma.cc/53SA-VHR6].

hospital and prescription drug benefits." Minn. Stat. § 256B.15, subd. 1a(e)(3) (2020). Federal and state laws governing estate-recovery programs do not specifically and expressly state whether capitation payments are recoverable. *See* 42 U.S.C. § 1396p; 42 C.F.R. § 433.36 (2021); Minn. Stat. § 256B.15; Minn. R. 9505.0135, subp. 4 (2021).

B.

As stated above, the district court in this case concluded on remand that the county's claim is barred on the ground that the county violated federal law by not giving Trahan notice that the county would seek to recover capitation payments from his estate after his death.[4] For legal authority, the district court cited and relied on the federal Medicaid Act and the State Medicaid Manual (SMM),[5] a publication of the Centers for Medicare and Medicaid Services (CMS), a federal agency within the United States Department of Health and Human Services that is tasked with administering the Medicaid program. The SMM states that it is the "official medium by which" CMS "issues mandatory, advisory, and optional Medicaid policies and procedures to the Medicaid State agencies." State Medicaid Manual, Foreword § A. The SMM states that its instructions "are official interpretations of the law and regulations, and, as such, are binding on Medicaid State agencies." State Medicaid Manual, Foreword § B.1.; *see also Pfoser v. Harpstead*, 939 N.W.2d 298, 314

[4]The district court analyzed Evert's second argument, which was based on statutory and administrative law, together with Evert's first argument, which was based on constitutional law. We believe that it would be more appropriate to analyze the two issues separately.

[5]https://www.sharinglaw.net/elder/3-3800-3812.htm [https://perma.cc/4Z8A-TWWS]; *see also* https://www.cms.gov/regulations-and-guidance/guidance/manuals/paper-based-manuals-items/cms021927 [https://perma.cc/Q2AK-BH3U].

n.11 (Minn. App. 2020) (noting binding nature of SMM), *aff'd*, 953 N.W.2d 507 (Minn. 2021).

The district court relied principally on section 3810.A.6. of the SMM, which instructs states as follows:

> When a Medicaid beneficiary, permanently institutionalized, or age 55 or older, is enrolled (either voluntarily or mandatorily) in a managed care organization and services are provided by the managed care organization that are included under the State's plan for estate recovery, you must seek adjustment or recovery from the individual's estate for the premium payments in your claim against the estate. *When the beneficiary enrolls in the managed care organization, you must provide a separate notice to the beneficiary that explains that the premium payments made to the managed care organization are included either in whole or in part in the claim against the estate*.

State Medicaid Manual § 3810.A.6. (emphasis added). In Minnesota, DHS's *MA Estate Recovery Manual* states that counties should seek to recover a portion of capitation payments related to long-term services and supports, such as home- and community-based waiver services, and that DHS and its actuary have "relied on Centers for Medicare and Medicaid Services (CMS) guidance, specifically, the CMS State Medicaid Manual, section 3810(A)(6)" to develop the actuarial percentages that should be applied to managed-care payments when seeking to recover costs from a decedent's estate. Minn. Dep't of Human Servs., *MA Estate Recovery Manual* § IV.A.1 (2022).[6]

[6]https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=SRU-020104 [https://perma.cc/77ZD-SUEN].

Neither section 3810.A.6. of the SMM nor the corresponding provision of DHS's *MA Estate Recovery Manual* have been the subject of an appellate opinion in Minnesota. In *Executive Office of Health & Human Services v. Trocki*, 174 N.E.3d 322 (Mass. App. Ct. 2021), the Massachusetts Court of Appeals stated that the SMM interprets federal statutes to allow recovery of capitation payments, including "capitation payments to managed care organizations." *Id.* at 327. The *Trocki* court explained that the recoverability of capitation payments "is not obvious, even to the specialized State agencies implementing Medicaid, let alone to the average Medicaid recipient." *Id.* at 328. The court further explained:

> It is certainly reasonable to require State Medicaid agencies to provide separate notice about estate recovery for capitation payments where such notice can allow Medicaid recipients to make an informed choice about healthcare options and prevent recipients from losing significant amounts of property and assets in their estates due to confusion or mistaken beliefs. . . . Notice that the State may seek recovery of these payments even if no services are rendered, is an appropriate safeguard to protect the best interests of Medicaid recipients, which include their interest in the financial consequences of receiving Medicaid, both to themselves and to their estates, as well as their interest in their health.
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> Even if MassHealth provides a general notice to MassHealth recipients about estate recovery, as it did here, there is good reason to require that MassHealth provide separate notice that capitated payments made to [senior care organizations, *i.e.*, managed-care organizations in Minnesota] will be recovered from the Medicaid recipient's estate. Unlike a traditional fee for service arrangement, MassHealth makes capitation payments without regard to the actual services provided the enrollee, and this key difference may cause confusion for Medicaid recipients. Individuals may not fully understand the difference between fee for service and capitation, or the implications of that difference on their estate

> unless it is carefully explained. Additionally, individuals enrolled in [senior care organizations] may not even be aware that MassHealth is making monthly capitation payments on their behalf since they are not responsible for these payments and thus may not receive invoices or other documentation putting them on notice of such payments. Thus, even if these individuals are aware of estate recovery generally, their lack of knowledge about capitation payments may cause them to mistakenly believe that the claims against their estates are minimal because they used few services, when in fact, the claim may be significant because they were members of the [senior care organization] for many years.

Id. In *Trocki*, the state Medicaid agency did not comply with the notice requirement in section 3810.A.6. of the SMM. *Id*. at 327. As a consequence, the court concluded that the state agency's claim against the estate was barred. *Id*. at 328.

C.

In this case, the district court found that the county did not introduce any evidence that it had given Trahan the "mandatory separate notice and explanation regarding the inclusion of capitation payments." The county does not challenge this finding on appeal. The district court's finding is consistent with the evidentiary record. The county submitted a blank application form for EW services, which, the county asserted, was in general use in 2010. The form includes a general notice that the state or county "may try to recover the cost of medical services paid by Medical Assistance (MA)" and "may file a claim against your estate." But there is no separate and specific reference to "premium payments made to the managed care organization," *i.e.*, capitation payments, as required by section 3810.A.6. of the SMM. Because the county has not argued that there is an inadequate legal basis for the district court's conclusion concerning lack of notice, and because the *Trocki*

opinion is persuasive, we conclude that the district court's conclusion has both a factual basis and a proper legal basis.

Furthermore, we note that the potential problems identified in the *Trocki* opinion appear to be present in this case. When Trahan accepted services from the county, he and his family apparently were concerned that the county might seek to recover the actual costs of the relatively limited services that were contemplated on a fee-for-service basis. In the first district court proceeding, the county did not submit any evidence or argument clearly indicating otherwise. Indeed, the county at that time said absolutely nothing about "capitation" payments or the like. Evert responded to the county's claim by attempting to prove the costs of the services actually provided by the managed-care organization, which, according to her evidence, totaled only $25,963.64. Not until the second district court proceeding in 2021—three years after Trahan's death—did the county introduce evidence and make argument concerning capitation payments. A notice specifically referring to the recoverability of capitation payments should have been given to Trahan in 2010, when he first applied for MA benefits, so that, before he accepted the services, he could have been fully informed and could have evaluated the advantages and disadvantages of accepting the services.

Thus, the district court did not err by concluding that the county's claim is barred by federal law due to the county's failure to give Trahan notice that the county would seek, after his death, to recover capitation payments related to his MA benefits.

D.

As stated above, the county has made four arguments for reversal. We need not resolve any of those arguments because none of them would result in reversal, even if meritorious. Our conclusion in part C is an independent and sufficient basis for affirming the district court's order and judgment. Even if Trahan's due-process rights were not violated, and even if the county proved the amount of its claim by a preponderance of the evidence, the county would not be entitled to relief for the reasons stated in parts B and C. In addition, the county's third argument is based on the mistaken premise that the district court applied the doctrine of equitable estoppel; in fact, the district court did not mention the doctrine. Also, the county's fourth argument is immaterial because the district court discussed whether benefits had been correctly paid in its prior order after the first district court proceeding, not in the order that now is on appeal.

In sum, the district court did not err by denying the county's claim against Trahan's estate.

Affirmed.