

ORIGINAL

In the
Supreme Court of Ohio

IN RE: ESTATE OF
JOSEPHINE A. CENTORBI

: Case No. 2010-0597
:
: On Appeal from the
: Cuyahoga County
: Court of Appeals,
: Eighth Appellate District
:
: Court of Appeals Case
: No. 93501
:

**APPELLANT OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
BRIEF ON THE MERITS**

ANTHONY CENTORBI (*pro se*)
8502 Jeffries Avenue
Cleveland, Ohio 44105

RICHARD CORDRAY (0038034)
Attorney General of Ohio

BENJAMIN C. MIZER* (0083089)
Solicitor General
**Counsel of Record*

ELISABETH A. LONG (0084128)
Deputy Solicitor

ROBERT J. BYRNE (0040299)
Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
benjamin.mizer@ohioattorneygeneral.gov

Counsel for Appellant
Ohio Department of Job and Family Services

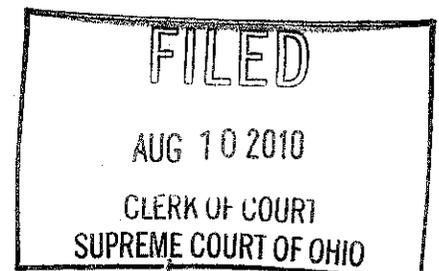


TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
STATEMENT OF THE CASE AND FACTS	3
A. Ohio’s Medicaid Estate Recovery Program governs the recovery of Medicaid benefits from the estates of deceased Medicaid recipients and defines the responsibilities of ODJFS and decedents’ estates under the program.	3
B. Josephine Centorbi’s estate failed to give notice to the program administrator, and the program administrator learned of the estate more than one year after Centorbi’s death.	4
C. The trial court and appeals court denied the State’s application to vacate the order relieving Centorbi’s estate from administration.	5
ARGUMENT.....	5
<u>Ohio Department of Job and Family Services’ Proposition of Law:</u>	
<i>Under the plain language of R.C. 2117.061, the State has either one year from the date of a Medicaid recipient’s death or ninety days after receiving notice of the death, whichever is later, to file a claim for Medicaid estate recovery.</i>	
A. By its plain language, R.C. 2117.061 establishes alternative limitations periods for Medicaid estate recovery claims.	5
B. R.C. 2117.061 reflects the General Assembly’s careful balancing of the State’s interest in recouping benefits from the estates of deceased Medicaid recipients and the estates’ interest in finality.	9
CONCLUSION.....	12
CERTIFICATE OF SERVICE	unnumbered
APPENDIX	
Notice of Appeal, April 6, 2010	A-1
Judgment Entry and Decision, Eighth District Court of Appeals, February 22, 2010	A-4

Judgment Entry and Decision, Court of Common Pleas, Probate Division, June 3, 2009 A-13

Magistrate’s Decision, Court of Common Pleas, Probate Division, April 10, 2009 A-17

R.C. 2117.061 A-22

R.C. 5111.11 A-24

TABLE OF AUTHORITIES

Cases	Page
<i>D.A.B.E., Inc. v. Toledo-Lucas County Bd. of Health</i> , 96 Ohio St. 3d 250, 2002-Ohio-4172	6, 9
<i>Hoff Research & Dev. Labs., Inc. v. Philippine Nat'l Bank</i> (2d Cir. 1970), 426 F.2d 1023	6
<i>In re Bace</i> (Bankr. S.D.N.Y. 2007), 364 B.R. 166	6
<i>In re Estate of Centorbi</i> (8th Dist.), No. 93501, 2010-Ohio-442	<i>passim</i>
<i>Morris v. Haren</i> (11th Cir. 1995), 52 F.3d 947	7
<i>O'Toole v. Denihan</i> , 118 Ohio St. 3d 374, 2008-Ohio-2574	7
<i>Ohio Dep't of Human Servs. v. Eastman</i> (9th Dist. 2001), 145 Ohio App. 3d 369.....	9
<i>Pizza v. Sunset Fireworks Co., Inc.</i> (1986), 25 Ohio St. 3d 1	7
<i>Reiter v. Sonotone Corp.</i> (1979), 442 U.S. 330	7
<i>State v. Elam</i> (1994), 68 Ohio St. 3d 585	5
<i>State ex rel. Jones v. Conrad</i> , 92 Ohio St. 3d 389, 2001-Ohio-207	6
<i>State ex rel. Wolfe v. Delaware County Bd. of Elections</i> (2000), 88 Ohio St. 3d 182	5
<i>Sweet v. United States</i> (S.D. Cal. 1947), 71 F. Supp. 863	7
<i>United States v. California Care Corp.</i> (9th Cir. 1983), 709 F.2d 1241	6
<i>United States v. Reinhardt Coll.</i> (N.D. Ga. Sept. 27, 1984), No. C83-1476A, 1984 U.S. Dist. Lexis 23229	6

Statutes, Rules and Constitutional Provisions

28 U.S.C. § 24156

Bankruptcy Rule 4003(b).....6

Civ. R. 528

Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, § 13612, 107 Stat. 312 (1993)3

R.C. 718.12(A).....7

R.C. 955.07(A).....7

R.C. 1345.10(C).....7

R.C. 1347.10(A).....7

R.C. 2117.06(B).....9

R.C. 2117.06(C).....9

R.C. 2117.061 *passim*

R.C. 2117.061(B)..... *passim*

R.C. 2117.061(E)1, 4, 6, 8

R.C. 5111.113

R.C. 5747.13(A).....8

Other Authorities

Ohio Dep’t of Human Servs., *Medicaid Estate Planning and Estate Recovery in Ohio* (Aug. 1999), available at http://jfs.ohio.gov/OHP/bltcf/reports/Er/ER_A.pdf (last visited Aug. 10, 2010).....11

State Probate Form 7.0, Notice of Administrator of Estate Recovery Program, available at http://www.supremecourt.ohio.gov/LegalResources/Rules/superintendence/probate_forms/decedentEstate/7_0.pdf (last visited Aug. 10, 2010).....3

U.S. Dep’t of Health & Human Servs., *Medicaid Estate Recovery* (Apr. 2005), available at <http://aspe.hhs.gov/daltcp/reports/estaterec.htm> (last visited Aug. 10, 2010).....3

U.S. General Accounting Office, *Medicaid recoveries from nursing home residents’ estates could offset program costs*, GAO/HRD-89-56 (Mar. 1989).....3

Webster’s Third New Int’l Dictionary7

INTRODUCTION

Federal law mandates that Ohio offset the costs of Medicaid benefits by recovering certain amounts from the estates of deceased Medicaid recipients. To this end, the Ohio Department of Job and Family Services (“ODJFS”) oversees the State’s Medicaid Estate Recovery Program (“Recovery Program”). When a Medicaid recipient dies, the person responsible for the decedent’s estate must timely submit notice to the Recovery Program Administrator (“program administrator”). The program administrator then must present a Medicaid recovery claim against an estate “not later than ninety days after the date on which the medicaid estate recovery reporting form is received under division (B) of this section *or* one year after the decedent’s death, *whichever is later.*” R.C. 2117.061(E) (emphasis added). The applicable limitations period therefore depends on when the program administrator receives notice from an estate.

Josephine Centorbi received approximately \$145,000 in Medicaid benefits before her death in February 2007. The probate court issued an order relieving Centorbi’s estate from administration in December 2007, but the estate failed to give notice to the program administrator. Nearly one year later, special counsel for the Ohio Attorney General independently discovered Centorbi’s estate and sought to vacate the probate court’s order so that the State could present its Medicaid estate recovery claim. The probate court denied the request, and the Eighth District Court of Appeals affirmed, erroneously concluding that the State’s claim was time-barred because it was not presented within one year of Centorbi’s death. In fact, the limitations period has not started to run because the program administrator never received notice from Centorbi’s estate.

The Eighth District’s decision bars all Medicaid estate recovery claims presented more than one year after a Medicaid recipient’s death, contrary to the plain language and intent of R.C.

2117.061. The statute clearly establishes two *alternative* limitations periods for Medicaid estate recovery claims and provides that “whichever is later” governs.

These alternative limitations periods reflect the General Assembly’s intent to balance the interest of estates in finality against the State’s interest in recovering money due under the Recovery Program. R.C. 2117.061 protects estates by barring Medicaid estate recovery claims presented more than one year after a Medicaid recipient’s death, *except* in situations where an estate does not provide notice to the program administrator within nine months after the recipient’s death. But by guaranteeing ODJFS at least ninety days to act *after* the program administrator receives notice, the General Assembly simultaneously protected Ohio’s interests by ensuring that ODJFS has a reasonable opportunity to recover money due. The Eighth District contravened the General Assembly’s intent by severely curtailing ODJFS’s ability to recover money due under the Recovery Program.

As a practical matter, the Eighth District’s interpretation would largely eliminate the State’s ability to file a recovery claim. The program administrator often does not receive notice of an estate until at least one year has elapsed following a Medicaid recipient’s death because an estate’s statutory notice obligation is often not triggered within that timeframe. See R.C. 2117.061(B). The Eighth District’s holding effectively bars the State from acting in many cases where an estate provides timely notice, in addition to all cases where notice is untimely. If allowed to stand, this erroneous interpretation could impede the State’s recovery of up to \$250 million in claims authorized by the General Assembly over the next ten years.

For these reasons and others set forth below, this Court should reverse the Eighth District’s decision.

STATEMENT OF THE CASE AND FACTS

- A. **Ohio's Medicaid Estate Recovery Program governs the recovery of Medicaid benefits from the estates of deceased Medicaid recipients and defines the responsibilities of ODJFS and decedents' estates under the program.**

In 1993, Congress mandated that States administering Medicaid programs establish "Medicaid estate recovery" programs to recover, among other things, certain Medicaid benefits from the estates of deceased Medicaid recipients. See Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, § 13612, 107 Stat. 312 (1993). These programs are a "cost effective way to offset state and Federal costs, while promoting equitable treatment of Medicaid recipients." U.S. Dep't of Health & Human Servs., *Medicaid Estate Recovery* (Apr. 2005), available at <http://aspe.hhs.gov/daltcp/reports/estaterec.htm> (last visited Aug. 10, 2010) (quoting U.S. General Accounting Office, *Medicaid recoveries from nursing home residents' estates could offset program costs*, GAO/HRD-89-56 (Mar. 1989)).

Ohio implemented its Recovery Program in 1995. See R.C. 5111.11. When a Medicaid recipient dies, all Medicaid benefits awarded after January 1, 1995, are subject to reimbursement and recovery. To ensure that ODJFS is aware of all estates in which it may have a potential recovery claim, the General Assembly enacted a law requiring the individual responsible for the estate ("the estate") of any decedent who was at least 55 years old to determine whether he or she had received Medicaid benefits. R.C. 2117.061(B). If the decedent did receive Medicaid benefits, then the estate must "submit a properly completed medicaid estate recovery reporting form . . . to the administrator of the medicaid estate recovery program." *Id.*; see State Probate Form 7.0, Notice of Administrator of Estate Recovery Program, available at http://www.supremecourt.ohio.gov/LegalResources/Rules/superintendence/probate_forms/decedentEstate/7_0.pdf (last visited Aug. 10, 2010).

To ensure that ODJFS is able to present any potential claims against an estate in a timely manner, the estate must give notice to the program administrator within thirty days after any of the following three events occurs: the granting of letters testamentary, the administration of the estate, or the filing of an application for release from administration. R.C. 2117.061(B).

ODJFS has only a limited window of time in which to present a Medicaid estate recovery claim. Specifically, the program administrator must present a claim to the estate or the decedent's legal representative "not later than ninety days after the date on which the medicaid estate recovery reporting form is received under division (B) of this section *or* one year after the decedent's death, *whichever is later.*" R.C. 2117.061(E) (emphasis added).

B. Josephine Centorbi's estate failed to give notice to the program administrator, and the program administrator learned of the estate more than one year after Centorbi's death.

Josephine Centorbi received Medicaid benefits totaling \$143,134.53 before dying intestate in February 2007. See *In re Estate of Centorbi* (8th Dist.), No. 93501, 2010-Ohio-442 ("App. Op."), ¶ 3. At no time did any person responsible for Centorbi's estate submit notice of the estate to the program administrator. *Id.* at ¶ 9. In December 2007, the probate court granted an application to relieve the estate from administration. *Id.* at ¶ 3.

Although Centorbi's estate never submitted notice, the State later learned of the estate. In December 2008, the State, under the impression that a final accounting had occurred, mistakenly filed an application to vacate the estate's final accounting and to reopen the estate. *Id.* at ¶ 4. The probate court dismissed the petition because a final accounting had not in fact occurred. In January 2009, the State then applied to vacate the order releasing the assets of Centorbi's estate from administration so that the State could present its recovery claim. *Id.* at ¶¶ 4-5.

C. The trial court and appeals court denied the State’s application to vacate the order relieving Centorbi’s estate from administration.

A magistrate judge conducted a hearing and denied the application, concluding that the State’s time to file a Medicaid recovery claim against the estate had expired under R.C. 2117.061. *Id.* at ¶ 5. The probate court adopted the magistrate’s decision over the State’s objections. *Id.* at ¶ 6.

The State appealed to the Eighth District Court of Appeals, arguing that the statute of limitations under R.C. 2117.061 had not begun to run because Centorbi’s estate had not provided notice as required by the same statute. *Id.* at ¶¶ 7-8. The appeals court affirmed the trial court’s decision. *Id.* at ¶ 19.

ARGUMENT

Ohio Department of Job and Family Services’ Proposition of Law:

Under the plain language of R.C. 2117.061, the State has either one year from the date of a Medicaid recipient’s death or ninety days after receiving notice of the death, whichever is later, to file a claim for Medicaid estate recovery.

A. By its plain language, R.C. 2117.061 establishes alternative limitations periods for Medicaid estate recovery claims.

The plain language of R.C. 2117.061 establishes alternative limitations periods that guarantee the State a minimum of ninety days to present a Medicaid estate recovery claim after receiving notice from a deceased Medicaid recipient’s estate. The Eighth District disregarded this plain language and erroneously concluded that R.C. 2117.061 imposes an absolute one-year limitations periods for these claims. See App. Op. ¶¶ 12, 18.

“The polestar of statutory interpretation is legislative intent, which a court best gleans from the words the General Assembly used and the purpose it sought to accomplish.” *State v. Elam* (1994), 68 Ohio St. 3d 585, 587. First, a court must “review the statutory language.” *State ex rel. Wolfe v. Delaware County Bd. of Elections* (2000), 88 Ohio St. 3d 182, 184. “[W]hen the

language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need for this court to apply the rules of statutory interpretation.” *State ex rel. Jones v. Conrad*, 92 Ohio St. 3d 389, 392, 2001-Ohio-207. A court “must presume that in enacting a statute, the General Assembly intended for the entire statute to be effective. Thus, all words should have effect and no part should be disregarded.” *D.A.B.E., Inc. v. Toledo-Lucas County Bd. of Health*, 96 Ohio St. 3d 250, 2002-Ohio-4172, ¶ 19 (internal citation omitted).

R.C. 2117.061(E) articulates a limitations period that is clearly “written in the alternative.” App. Op. ¶ 21 (Gallagher, A.J., dissenting). The section provides:

The administrator of the medicaid estate recovery program shall present a claim for estate recovery to the person responsible for the estate of the decedent or the person’s legal representative not later than ninety days after the date on which the medicaid estate recovery reporting form is received under division (B) of this section *or* one year after the decedent’s death, *whichever is later*.

R.C. 2117.061(E) (emphasis added). By using the word “or” and the phrase “whichever is later,” the General Assembly established two limitations periods for estate recovery claims and explained when each period applies.

Courts regularly describe statutory limitations periods like this one—provisions including “or” and “whichever is later”—as “alternative limitations periods.” See *United States v. California Care Corp.* (9th Cir. 1983), 709 F.2d 1241, 1247 (interpreting the “alternative limitations period” in 28 U.S.C. § 2415); *Hoff Research & Dev. Labs., Inc. v. Philippine Nat’l Bank* (2d Cir. 1970), 426 F.2d 1023, 1026 (analyzing the “two separately-timed and alternative limitations periods” in a New York fraud statute); *United States v. Reinhardt Coll.* (N.D. Ga. Sept. 27, 1984), No. C83-1476A, 1984 U.S. Dist. Lexis 23229, at *11 (interpreting the “alternate limitations periods” in 28 U.S.C. § 2415); *In re Bace* (Bankr. S.D.N.Y. 2007), 364 B.R. 166, 171 (interpreting “Bankruptcy Rule 4003(b)’s alternative limitations periods”).

Indeed, “the word ‘or’ [is] a function word indicating an alternative between different or unlike things.” *Pizza v. Sunset Fireworks Co., Inc.* (1986), 25 Ohio St. 3d 1, 4-5 (citing *Webster’s Third New Int’l Dictionary*); see also *O’Toole v. Denihan*, 118 Ohio St. 3d 374, 2008-Ohio-2574, ¶ 51 (“The word ‘or’ is primarily used as a disjunctive, and ‘canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise.”) (quoting *Reiter v. Sonotone Corp.* (1979), 442 U.S. 330, 339). And “the plain meaning of the phrase ‘whichever is later’ refers to the later of two dates” separated by the “or.” *Morris v. Haren* (11th Cir. 1995), 52 F.3d 947, 949 (per curiam). Where a limitations period is drafted in the alternative, courts must “interpret the statute so as to give each part [of the limitations period] a meaning.” *Sweet v. United States* (S.D. Cal. 1947), 71 F. Supp. 863, 864.

The General Assembly regularly uses this construction to establish alternative limitations periods for causes of action, without confusion. See, e.g., R.C. 718.12(A) (“Civil actions to recover municipal income taxes and penalties and interest . . . shall be brought within three years after the tax was due *or* the return was filed, *whichever is later*”) (emphasis added); R.C. 955.07(A) (requiring the county auditor to keep a record of all dog registration certificates “for two years *or* until after an audit performed by the auditor of the state, *whichever is later*.”) (emphasis added); R.C. 1345.10(C) (Consumer Sales Practices Act suits must be raised within “two years after the occurrence of the violation . . . *or* . . . one year after the termination of proceedings by the attorney general with respect to the violation, *whichever is later*”) (emphasis added); R.C. 1347.10(A) (Uniform Commercial Code actions for wrongful disclosure of information in personal information systems “shall be brought within two years after [the wrongdoing occurs] *or* within six months after the wrongdoing is discovered, *whichever is later*;

provided that no action shall be brought later than six years after the cause of action accrued”) (emphasis added); R.C. 5747.13(A) (“No assessment shall be made or issued against an employer, taxpayer, or qualifying entity, more than four years after the final date the return subject to assessment was required to be filed *or* the date the return was filed, *whichever is later.*”) (emphasis added). Similarly, Civ. R. 52 allows a party to request specific findings of fact and conclusions of law provided the request is made “before the entry of judgment pursuant to [Civ. R.] 58, *or* not later than seven days after the party filing the request has been given notice of the court’s announcement of its decision, *whichever is later.*” Civ. R. 52 (emphasis added).

Like all the above limitations periods, R.C. 2117.061(E) cannot logically be read in any way other than to establish two alternative limitations periods: The government must file a recovery claim against a Medicaid recipient’s estate within *either* (1) ninety days after receiving notice from the estate, *or* (2) one year after the Medicaid recipient’s death. “[T]he provision requiring a claim within one year of decedent’s death resolves only half the puzzle.” App. Op. ¶ 22 (Gallagher, A.J., dissenting). Because whichever limitations period is “later” governs, if the State has not received notice under R.C. 2117.061(B) in a particular case, then the State’s limitations period has not run.

The Eighth District’s ruling disregards the plain language of R.C. 2117.061 by interpreting it as an absolute one-year limitations period for Medicaid estate recovery claims. To interpret R.C. 2117.061 that way, the Eighth District effectively read out of the statute *both* the language referring to the ninety-day period following notice *and* the language indicating two alternative limitations periods—that is, “whichever is later.” But reading language out of a statute runs

contrary to the well-settled interpretive canon that “all words [in a statute] should have effect and no part should be disregarded.” See *D.A.B.E., Inc.*, 2002-Ohio-4172, at ¶ 19.

R.C. 2117.061 expressly allows the State to present a Medicaid estate recovery claim *either* within one year of the Medicaid recipient’s death, *or*, in the alternative, within ninety days of receiving notice from the decedent’s estate, *whichever is later*.

B. R.C. 2117.061 reflects the General Assembly’s careful balancing of the State’s interest in recouping benefits from the estates of deceased Medicaid recipients and the estates’ interest in finality.

The alternative limitations periods in R.C. 2117.061 reflect the General Assembly’s careful balancing of the State’s interest in recovering money due under the Recovery Program and the estates’ interests in finality. The General Assembly imposed a limitations period on Medicaid estate recovery claims to protect the finality of estates. But it simultaneously protected the State’s interests by guaranteeing that the State would receive notice from a deceased Medicaid recipient’s estate before losing the opportunity to assert a recovery claim against the estate. The Eighth District’s erroneous interpretation of R.C. 2117.061 upsets this legislative balance and, in doing so, severely impairs the State’s ability to recoup Medicaid benefits as the General Assembly intended.

Before it enacted R.C. 2117.061, the General Assembly did not limit the State’s presentment of Medicaid estate recovery claims to a particular timeframe. R.C. 2117.06 required claims against an estate to be presented within one year after a Medicaid recipient’s death, but the State was exempted from this general statute of limitations. See *Ohio Dep’t of Human Servs. v. Eastman* (9th Dist. 2001), 145 Ohio App. 3d 369, 373 (“[T]he state’s claim [is] not . . . time barred by the operation of R.C. 2117.06(B) and (C), as they are generally worded statutes of limitation (or non-claim), in that they do not specifically foreclose claims by the state.”).

In 2003, the General Assembly recognized that estates had a repose interest—that is, an interest in not being forever subject to Medicaid estate recovery claims. To promote finality in the resolution of estates, the General Assembly enacted a specific limitations period for the State to assert Medicaid estate recovery claims. The statute of limitations enacted in R.C. 2117.061 provided much-desired finality for estates by barring the State from presenting claims after the later of two deadlines has passed: one year after the Medicaid recipient's death, *or* ninety days after the program administrator receives notice from an estate. These alternative limitations periods protect the State's interests by ensuring that it will not lose its ability to recover funds simply because it is unaware of a deceased Medicaid recipient's estate.

Under the Eighth District's erroneous interpretation of R.C. 2117.061, Ohio would often be unable to pursue otherwise valid Medicaid recovery claims through no fault of its own. R.C. 2117.061(B) requires an estate to give notice to the program administrator within thirty days *after* the granting of letters testamentary, the administration of the estate, or filing an application for release from administration. But these three events can, and regularly do, occur more than one year after a Medicaid recipient's death. Whenever more than one year elapses before one of these triggering events, the program administrator will not receive notice of a claim within one year after a Medicaid recipient's death.

In addition to posing severe practical difficulties for the State, the Eighth District's interpretation of R.C. 2117.061 would render meaningless another provision of the same section. Paragraph (E) limits the State's time to bring a Medicaid Estate recovery claim, and paragraph (B) of the same section requires estates to give notice to the recovery program administrator. Under the Eighth District's interpretation, the notice required by the same section serves no purpose whatsoever in countless cases. That is so because even if an estate timely gives notice,

the State would not be able to pursue a recovery claim any time it receives the notice more than one year after the Medicaid recipient's death.

The Eighth District's erroneous interpretation thus eliminates any benefit the State received from the legislative balance struck in R.C. 2117.061. An estate would have certainty after one year has passed, but the State would have no right to receive notice of a deceased Medicaid recipient's estate before losing its ability to present a recovery claim against that estate. This could impede the State's recovery of up to \$25 million in Medicaid benefits annually, or \$250 million over the next ten years.

The lower court's decision further undercuts the purpose of R.C. 2117.061 by creating perverse incentives for estates to delay the submission of notice. As the Eighth District dissent points out, "[t]he majority view would allow a representative of a decedent's estate to intentionally not fill out a Medicaid estate recovery form, and by failing to do so, retain an undeserved windfall upon the expiration of one year from the date of decedent's death." App. Op. ¶ 20 (Gallagher, A.J., dissenting). This is of particular concern because the Medicaid field is already filled with "estate planning techniques that continue to be used to circumvent eligibility policy." Ohio Dep't of Human Servs., *Medicaid Estate Planning and Estate Recovery in Ohio* 119 (Aug. 1999), available at http://jfs.ohio.gov/OHP/bltcf/reports/Er/ER_A.pdf (last visited Aug. 10, 2010). Similarly, the Eighth District's ruling encourages unintentional noncompliance with reporting requirements by eliminating any disincentive for delaying (or entirely avoiding) notice.

R.C. 2117.061 does protect the finality of estates, but it does not bar otherwise valid recovery claims when the State has not yet received statutorily required notice from an estate. This Court should restore the intended balance struck by R.C. 2117.061, recognizing that it

establishes two alternative limitations periods, and not an absolute one-year bar on Medicaid estate recovery claims.

CONCLUSION

For the foregoing reasons, this Court should reverse the Eighth District's decision, reopen Centorbi's estate, and allow the State to pursue its Medicaid estate recovery claim.

Respectfully submitted,

RICHARD CORDRAY (0038034)
Attorney General of Ohio


BENJAMIN C. MIZER* (0083089)
Solicitor General

**Counsel of Record*

ELISABETH A. LONG (0084128)
Deputy Solicitor

ROBERT J. BYRNE (0040299)
Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
benjamin.mizer@ohioattorneygeneral.gov

Counsel for Appellant
Ohio Department of Job and Family Services

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Appellant Ohio Department of Job and Family Services Brief on the Merits was served by U.S. mail this 10th day of August, 2010, upon the following party:

Anthony Centorbi (*pro se*)
8502 Jeffries Avenue
Cleveland, Ohio 44105



Benjamin C. Mizer
Solicitor General

APPENDIX

In the
Supreme Court of Ohio 10-0597

IN RE: THE ESTATE OF
JOSEPHINE A. CENTORBI.

: Case No. _____
:
: On Appeal from the
: Cuyahoga County
: Court of Appeals,
: Eighth Appellate District
:
: Court of Appeals Case
: No. 93501
:

**NOTICE OF APPEAL OF APPELLANT
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES**

ANTHONY CENTORBI (*pro se*)
8502 Jeffries Avenue
Cleveland, Ohio 44105

RICHARD CORDRAY (0038034)
Attorney General of Ohio

BENJAMIN C. MIZER* (0083089)
Solicitor General
**Counsel of Record*

ELISABETH A. LONG (0084128)
Deputy Solicitor

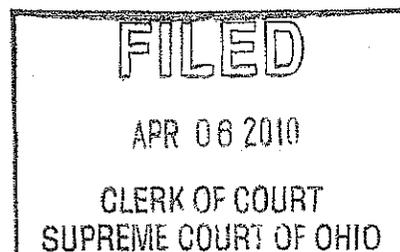
ROBERT J. BYRNE (0040299)
Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

benjamin.mizer@ohioattorneygeneral.gov

Counsel for Appellant
Ohio Department of Job and Family Services

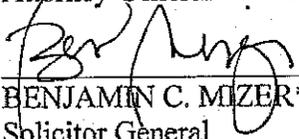


**NOTICE OF APPEAL OF APPELLANT
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES**

Appellant Ohio Department of Job and Family Services gives notice of its claimed discretionary appeal to this Court, pursuant to Ohio Supreme Court Rule 2.2, from a Judgment Entry of the Eighth District Court of Appeals, journalized in Case No. 93501, *In Re: The Estate of Josephine A. Centorbi*. The Judgment Entry was stamped "Journalized" on February 22, 2010. The Judgment Entry and Opinion are attached to the Appellant's Memorandum in Support of Jurisdiction. Reasons for this discretionary appeal, including the public and great general interest involved in this case, are fully set forth in the accompanying Memorandum in Support of Jurisdiction.

Respectfully submitted,

RICHARD CORDRAY (0038034)
Attorney General of Ohio


BENJAMIN C. MIZER* (0083089)
Solicitor General

**Counsel of Record*

ELISABETH A. LONG (0084128)
Deputy Solicitor

ROBERT J. BYRNE (0040299)

Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

benjamin.mizer@ohioattorneygeneral.gov

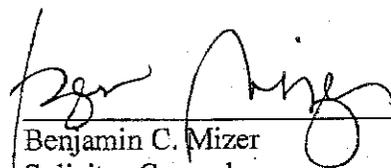
Counsel for Appellant

Ohio Department of Job and Family Services

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Appeal of Appellant Ohio Department of Job and Family Services was served by U.S. mail this 6th day of April, 2010, upon the following party:

Anthony Centorbi (*pro se*)
8502 Jeffries Avenue
Cleveland, Ohio 44105


Benjamin C. Mizer
Solicitor General

FEB 23 2010

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93501

IN RE: THE ESTATE OF
JOSEPHINE A. CENTORBI

[APPEAL BY THE STATE OF OHIO
DEPARTMENT OF JOB AND FAMILY SERVICES]

**JUDGMENT:
AFFIRMED**

Civil Appeal from the Cuyahoga
County Court of Common Pleas - Probate Division
Case No. 2007 EST1032168

BEFORE: Kilbane, J., Gallagher, A.J., and McMonagle, J.

RELEASED: February 11, 2010

JOURNALIZED: FEB 23 2010



VOL 0599 000541

ATTORNEYS FOR APPELLANT

Richard Cordray
Ohio Attorney General
Robert J. Byrne
Assistant Attorney General
Collections Enforcement
150 E. Gay Street, 21st Floor
Columbus, Ohio 43215-3130

Alan H. Weinberg
Sara M. Donnersbach
Special Counsel for Ohio Attorney General
Weltman, Weinberg & Reis Co., L.P.A.
323 Lakeside Avenue, West
Suite 200
Cleveland, Ohio 44113

FILED AND JOURNALIZED
PER APP.R. 22(C)

FEB 22 2010
GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.

APPELLEE

Anthony Centorbi
8502 Jeffries Avenue
Cleveland, Ohio 44105

ANNOUNCEMENT OF DECISION
PER APP.R. 22(B) AND 26(A)
RECEIVED

FEB 11 2010

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.

CA09093501

61678824



N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

COPIES MAILED TO COUNSEL FOR
APPELLANT AND APPELLEE BY
APPELLATE CLERK OF COURTS

10699 10542

MARY EILEEN KILBANE, J.:

This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. Appellant, the state of Ohio ("the State"), appeals the trial court's decision that denied the State's application to reopen an estate in order to file its claim for Medicaid reimbursement. After a review of the record and applicable law, we affirm.

The following facts give rise to this appeal.

Josephine Centorbi ("decendent") died intestate on February 12, 2007. On December 21, 2007, decendent's sister, Diane Nancy Fiorille, filed an application to relieve the estate from administration. The trial court granted the application the same day.

On December 11, 2008, the State filed an application to vacate the final accounting and reopen the estate. The trial court scheduled a hearing for January 20, 2009. The State failed to appear and the petition was dismissed.

On January 27, 2009, the State filed a second application to vacate the order releasing assets from administration.¹ On March 30, 2009, a magistrate held a hearing on the application. On April 10, 2009, the magistrate issued a decision denying the application after concluding that pursuant to R.C. 2117.061

¹Although titled slightly different than the previously filed application, both applications were nearly identical and cited the same case law.

110699 110543

the time for the State to file its claim against the estate had expired.

On April 17, 2009, the State filed objections to the magistrate's decision. The State maintained that the statute of limitations outlined in R.C. 2117.061 did not apply. On June 3, 2009, the trial court overruled the objections and adopted the magistrate's decision.

The State appealed, asserting one assignment of error for our review.

“WHETHER THE PROBATE COURT MAGISTRATE COMMITTED REVERSIBLE ERROR BY DENYING APPELLANT’S OBJECTIONS TO MAGISTRATE’S DECISION WHICH DENIED APPELLANT’S APPLICATION TO VACATE FINAL ACCOUNTING AND REOPEN ESTATE BASED UPON ITS INTERPRETATION OF OHIO REVISED CODE 2117.061.”

The State argues that the one-year statute of limitations to file a claim against an estate pursuant to R.C. 2117.061 did not begin to run and, in the alternative, if the time has now expired, the one-year statute of limitations does not apply. However, after a review of the applicable law, we disagree.

The State alleges that the decedent was a Medicaid recipient. The individual responsible for an estate must, pursuant to R.C. 2117.061(B)(3), complete a Medicaid estate recovery form within 30 days of filing an application to relieve the estate from administration. On the application, to relieve the estate from administration, the applicant must check the box that indicates the “[d]ecedent was 55 years of age or older at the time of death and was a recipient of medical assistance under Chapter 5111 of the Revised Code.” This language

may have been confusing to the decedent's sister who filed the application without an attorney. It is undisputed that the box was not checked and that the Medicaid estate recovery form was never completed.

The State argues that because the form was never completed, the statute of limitations has not been triggered. However, this interpretation contradicts the clear language of the statute. "When the language of a statute is plain and unambiguous and conveys a clear and definite meaning," this court does not need to interpret the statute. *Symmes Twp. Bd. of Trustees v. Smyth*, 87 Ohio St.3d 549, 553, 2000-Ohio-470, 721 N.E.2d 1057, citing *Meeks v. Papadopulos* (1980), 62 Ohio St.2d 187, 190, 404 N.E.2d 159.

The pertinent portion of R.C. 2117.061(E) in effect at the time of the decedent's death, detailing the time limitations for filing a claim against an estate, states:

"The administrator of the medicaid estate recovery program shall present a claim for estate recovery to the person responsible for the estate of the decedent or the person's legal representative not later than ninety days after the date on which the medicaid estate recovery reporting form is received under division (B) of this section or one year after the decedent's death, whichever is later."

The language of R.C. 2117.061(E) is clear in its intent to impose a maximum period of one year from the decedent's death to file a claim. If the legislature had intended the completion and submission of the Medicaid estate

VOL 0699 #00545

recovery reporting form to be a prerequisite to filing a claim, the legislature would not have specifically used the language "or one year after the decedent's death, whichever is later." (Emphasis added.) Therefore, this argument is without merit.

The decedent died on February 12, 2007. The State did not file its first application to reopen the estate until December 11, 2008, nearly ten months beyond the one-year statute of limitations. The application was dismissed by the trial court. The State filed its second application to reopen the estate on January 27, 2009, nearly two years after the decedent's death, and almost a year beyond the applicable statute of limitations. Clearly, the application was not timely filed.

The State further argues that even if the one-year statute of limitations applied, despite the Medicaid estate recovery form not being completed, statutes of limitation are inapplicable to the State unless the statute specifically provides that the time limitation applies to the State.

The State urges this court to adopt the rationale in a factually similar Ninth District case, *Ohio Dept. of Human Serv. v. Eastman* (2001), 145 Ohio App.3d 369, 763 N.E.2d 193. In *Eastman*, the State did not bring its claim for Medicaid reimbursement against the estate for more than a year after the decedent's death. The *Eastman* court analyzed R.C. 2117.06(B), a broad statute

VOL0699 00546

governing virtually all creditor claims against an estate.

As the basis for its decision, *Eastman* relied on the well-established principle outlined in *Ohio Dept. of Transp. v. Sullivan* (1988), 38 Ohio St.3d 137, 140, 527 N.E.2d 798, which held that the generally worded statutes of limitations do not apply as a bar against the State. *Sullivan* emphasized the protection of government assets as the reason for this rule.

We find the State's reliance on *Eastman* misplaced. In *Eastman*, R.C. 2117.06(B) was the statute at issue and stated that "[a]ll claims shall be presented within one year after the death of the decedent." The statute clearly failed to specifically limit the State's time to file a claim; therefore, pursuant to *Sullivan*, as a generally worded statute it was inapplicable to the State.

However, the statute at issue in the instant case is the version of R.C. 2117.061(E) in effect at the time of the decedent's death in 2007, which unlike R.C. 2117.06(B) at issue in *Eastman*, does not provide a general one-year time limitation; rather, it provides a one-year time limitation specifically for the "administrator of the Medicaid estate recovery program." The goal of the statutory scheme governing claims against an estate is to efficiently and expeditiously resolve these issues. *Reid v. Premier Health Care Serv.* (Mar. 19, 1999), Montgomery App. No. 17437. The legislature addressed this issue when it specifically imposed a one-year statute of limitations for Medicaid claims.

WB0699 PG0547

Therefore, the State's sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, Probate Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Mary Eileen Kilbane
MARY EILEEN KILBANE, JUDGE

CHRISTINE T. McMONAGLE, J., CONCURS;
SEAN C. GALLAGHER, A.J., DISSENTS (SEE SEPARATE DISSENTING
OPINION)

SEAN C. GALLAGHER, A.J., DISSENTING:

I respectfully dissent from the majority view that R.C. 2117.061(E) clearly imposes a maximum period of one year from the date of decedent's death for the State to file a claim against the estate. The majority view would allow a representative of a decedent's estate to intentionally not fill out a Medicaid estate recovery form, and by failing to do so, retain an undeserved windfall upon the expiration of one year from the date of decedent's death.

It is clear that R.C. 2117.061(E) is written in the alternative. A claim must be made within 90 days from the date a completed form is received *OR* within one year following decedent's death, with the deciding option being "whichever is later."

Because a completed Medicaid estate recovery form was never received by the State, the provision requiring a claim within one year of decedent's death resolves only half the puzzle. In order for the 90-day clock to run on the first option, the form must actually be received. Since it was not, I cannot find that the lapse of one year from the date of decedent's death alone satisfies the requirement that this option is the one that occurred later.

PROBATE COURT
FILED
JUN - 3 2009
CUYAHOGA COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
PROBATE DIVISION

IN RE: ESTATE OF
JOSEPHINE A. CENTORBI

)
)
)
)
)
)

CASE NO. 2007 EST 0132168

JUDGE ANTHONY J. RUSSO

JUDGMENT ENTRY

This matter is before the Court on an Application to Vacate Order Releasing Assets From Administration filed on January 27, 2009 by Attorney Alan H. Weinberg, Special Counsel for the Ohio Attorney General.

A hearing was held on the Application before Magistrate Koenig on March 30, 2009. Notice was given as required by law. No transcript of the proceedings was taken. A Magistrate's Decision was issued on April 10, 2009 recommending that the Application be denied for the reason that under R.C. § 2117.061, the time period that the Administrator had to file a claim against the estate has expired.

The Court finds, after reviewing the entire file, including the Magistrate's Decision, and upon careful review of the objection filed by Attorney Weinberg, that the objection is not well-taken and should be overruled and the Application should be denied for the reasons that the Application is patently defective and that under O.R.C. § 2117.061, the time period the Claimant had to file its claim has expired.

The Court further finds that the findings and conclusions of the Magistrate should be adopted as the findings and conclusions of the Court.

As stated in the Application, Claimant brings the Application to Vacate "pursuant to Section 2113.03 of the Revised Code." R.C. § 2113.03, a statute addressing a release from

~~DUCKETED~~

administration, does not provide authority or procedure for an Application to Vacate. This Application, which petitions the Court to vacate or grant relief from a prior order, is a form of a Civil Rule 60(B) Motion For Relief From Judgment. Civ. R. 60(B) provides:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation.

"In order to prevail on a Civ. R. 60(B) motion for relief from judgment, the movant must establish that she has a meritorious defense or claim to present if relief is granted; that she is entitled to relief under one of the grounds stated in Civ. R. 60(B)(1) through (5); and that the motion is made within a reasonable time." *GTE Automatic Electric, Inc. v. ARC Industries, Inc.*, 47 Ohio St. 2d 146 (Ohio 1976). "A failure to establish any one of these three requirements will cause the motion to be overruled. *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St. 3d 17 (Ohio 1988).

This Application, filed over a year after the decedent's death was not made in reasonable time as required by the Rule. Further, the Application fails to state any underlying facts, either within the Application or by supporting Affidavit, to justify relief. Finally, as granting the

Application would reverse this Court's previous decision in *Estate of Josephine A. Raia, Case No. 2005 EST 0106474*, where this Court issued an order finding that, if no notice is given to the Administrator of the State of Ohio Estate Recovery Program by the estate representative, the State of Ohio has no more than one year from the decedent's date of death to file a claim against the estate, Claimant has failed to establish a meritorious defense.

Even if this Court chose not to analyze this Application under Civ. R. 60(B), the Application must fail for the reason that it is not timely filed under O.R.C. § 2117.061. The version of O.R.C. § 2117.061(B) in effect at the time of the decedent's death required that the person responsible for the decedent's estate shall determine whether the decedent was a Medicaid recipient at any time during her life. If the decedent was known to be a Medicaid recipient, the person responsible for the estate is required to submit a Medicaid Estate Recovery reporting form to the administrator of the Medicaid Estate Recovery Program within 30 days of the filing of the issuance of letters testamentary, or the administration of the estate, or the filing of an application to release the estate from administration.

O.R.C. § 2117.061(E) provided that the Administrator of the Estate Recovery Program shall present the claim for recovery not later than 90 days after the date on which the Medicaid Estate Recovery reporting form is received under division (B) of the section, or one year after the decedent's death, whichever is later.

In this case, the person responsible for the estate, Diane Nancy Fiorille, indicated that no notice was required to be given to the Administrator of the Estate Recovery Program and therefore did not submit a reporting form. O.R.C. § 2117.061 does not define the criteria or steps required in making that determination. Since no form was filed, under O.R.C. § 2117.061(E), the

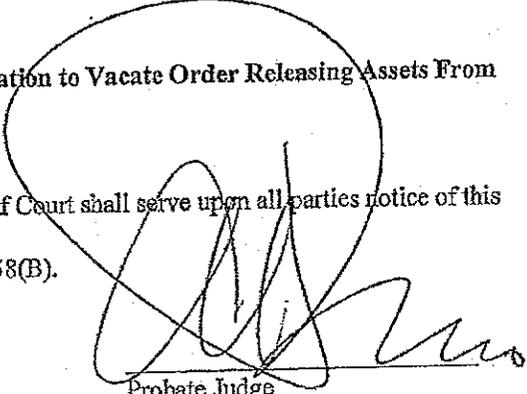
Administrator of the Estate Recovery Program had one year from the decedent's date of death to make the claim, or February 12, 2008. No claim was made. Therefore, the claim is barred.

As Magistrate Koenig set forth in her decision, and as this Court previously held in *Rain*, the purpose of the statute is to require the State of Ohio to make its claim no later than one year after the decedent's death. This is to facilitate prompt administration of the estate and to bar creditors who fail to file claims on time. The Ohio legislature clearly intended to give the Administrator of the Ohio Medicaid Estate Recovery Program deference by extending his/her time period to one year, versus the six months other creditors have to file claims. Providing the State of Ohio with an indefinite time period to file its claims contradicts the legislature's attempt to place a time restriction on the filing of claims by the State of Ohio. (Magistrate's Decision Page 4).

Therefore, it is **ORDERED** that the Magistrate's Decision is **ADOPTED** as the decision of this Court.

It is further **ORDERED** that the Application to Vacate Order Releasing Assets From Administration is **DENIED**.

It is further **ORDERED** that the Clerk of Court shall serve upon all parties notice of this judgment and date of entry pursuant to Civ. R. 58(B).



Probate Judge

JUDGE ANTHONY J. RUSSO

PROBATE COURT
FILED
APR 10 2009
CUYAHOGA COUNTY, O.

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
CUYAHOGA COUNTY, OHIO

IN RE: ESTATE OF)
JOSEPHINE A. CENTORBI,)
DECEASED))
CASE NO. 2007 EST 132168
MAGISTRATE'S DECISION

APR 10 2009

This matter is before the Court on the **Application to Vacate Order Releasing Assets from Administration** filed by Alan H. Weinberg, Special Counsel for the State of Ohio Medicaid Estate Recovery Program.

Movant attempted to notify decedent's next-of-kin, Anthony Centorbi, by certified mail. The certified mail notice was not claimed by Centorbi; however, Movant also notified Centorbi by ordinary mail on March 3, 2009. Thus, notice to the next-of-kin was given as is required pursuant to law.

Present at the hearing was Sara Donnersbach, on behalf of Alan H. Weinberg. No transcript of the proceedings was taken.

ISSUE

Whether the *Entry Relieving Estate from Administration* dated December 21, 2007 should be vacated for the reason that the Applicant did not give notice of filing the *Application to Relieve Estate from Administration* to the Administrator of the State of Ohio Estate Recovery Program.

LAW

The Movant uses outdated law applicable prior to September 26, 2003. Previously, creditors had one year from the decedent's date of death to file a claim against the estate. The State of Ohio apparently had no bar. However, **ORC Section 2117.06** was amended. Since September 26, 2003, creditors only have six months from the decedent's date of death to file a claim against the estate. Furthermore, the Ohio legislature specifically addressed claims brought by the Administrator of the State of Ohio Estate Recovery Program. In enacting **ORC Section 2117.061**, the procedure for notice to the Administrator of the Estate Recovery Program is set forth, as are the time limits for filing claims. The Administrator of the State of Ohio Estate Recovery Program has 90 days from the date he/she receives notice from the estate representative that the decedent was a Medicaid recipient or one year from the decedent's date of death, whichever is later.

FACTS

Josephine Centorbi died on February 12, 2007. On December 21, 2007, Diane Nancy Fiorille, the decedent's sister, filed an *Application to Relieve Estate from Administration*. Ms. Fiorille informed the Court that notice to Estate Recovery was not required. The *Application* was granted the same date. The decedent's brother, Andy Russo, paid the funeral bill of \$7,730.18. He waived any reimbursement and consented to Ms. Fiorille receiving the intangible personal property. An Avon Products account valued at \$310.92 was distributed to Ms. Fiorille and the decedent's 1/4 interest in real estate valued at \$28,050.00 was transferred to the decedent's son, Anthony Centorbi.

The Movant filed the *Application to Vacate Order Releasing Assets from Administration* on January 27, 2009, noting that the decedent was a Medicaid recipient during her lifetime.

CONCLUSION

It is the decision of this Magistrate that the *Application to Vacate Order Releasing Assets from Administration* be **DENIED** based on the reason that, under **ORC Section 2117.061**, the time period that the Administrator had to file a claim against the estate has expired.

The version of **ORC Section 2117.061(B)** in effect at the time of the decedent's death required that the person responsible for the decedent's estate shall determine whether the decedent was a Medicaid recipient at any time during her life. If the decedent was known to be a Medicaid recipient, the person responsible for the estate is required to submit a Medicaid Estate Recovery reporting form to the administrator of the Medicaid Estate Recovery Program within 30 days of the filing of the issuance of letters testamentary, or the administration of the estate, or the filing of an application to release the estate from administration.

ORC Section 2117.061(E) provided that the Administrator of the Estate Recovery Program shall present the claim for recovery not later than 90 days after the date on which the Medicaid Estate Recovery reporting form is received under division (B) of the section, or one year after the decedent's death, whichever is later.

In this case, the person responsible for the estate, Diane Nancy Fiorille, indicated that no notice was required to be given to the Administrator of the Estate

Recovery Program and therefore did not submit a reporting form. **ORC Section 2117.061** does not define the criteria or steps required in making that determination. Since no form was filed, under **ORC Section 2117.061(E)**, the Administrator of the Estate Recovery Program had one year from the decedent's date of death to make the claim, or February 12, 2008. No claim was made. Therefore, the claim is barred.

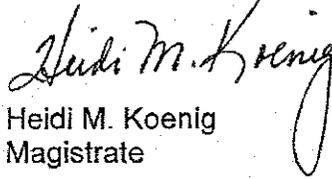
The purpose of the statute is to require the State of Ohio to make its claim no later than one year after the decedent's death. This is to facilitate prompt administration of the estate and to bar creditors who fail to file claims on time. The Ohio legislature clearly intended to give the Administrator of the Ohio Medicaid Estate Recovery Program deference by extending his/her time period to one year, versus the six months other creditors have to file claims. Providing the State of Ohio with an indefinite time period to file its claims contradicts the legislature's attempt to place a time restriction on the filing of claims the by the State of Ohio.

Finally, there is precedent for this decision. This Court issued an Order in *Estate of Josephine A. Raia, Case No. 2005 EST 0106474*, finding that, if no notice is given to the Administrator of the State of Ohio Estate Recovery Program by the estate representative, the State of Ohio has no more than one year from the decedent's date of death to file a claim against the estate. In *Raia*, this Court found that the State of Ohio was time barred from filing its claim.

NOTICE TO COUNSEL OR PARTIES

Pursuant to Civil Rule 53(D)(3)(b)(iv), a party shall not assign as error on appeal the Court's adoption of any factual finding of fact or legal conclusion of a magistrate, whether or not specifically designated as a finding of fact or conclusion of law under Civ R. 53(D)(3)(a)(ii), unless that party has objected to that finding or conclusion as required by Civil Rule 53(D)(3)(b).

Respectfully submitted,

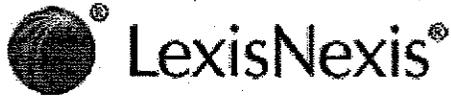

Heidi M. Koenig
Magistrate

APR 10 2009

Copy mailed to:

Alan H. Weinberg, Esq.
Weltman, Weinberg & Reis Co., L.P.A.
323 West Lakeside Avenue
Suite #200
Cleveland, OH 44113

Anthony Centorbi
8502 Jeffries Avenue
Cleveland, OH 44105



PAGE'S OHIO REVISED CODE ANNOTATED
Copyright (c) 2010 by Matthew Bender & Company, Inc
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

**TITLE 21. COURTS -- PROBATE -- JUVENILE
CHAPTER 2117. PRESENTMENT OF CLAIMS AGAINST ESTATE
CLAIMS OF CREDITORS**

ORC Ann. 2117.061 (2010)

§ 2117.061. Submission of medicaid estate recovery reporting form to administrator; presentation of claim for recovery

(A) As used in this section:

(1) "Medicaid estate recovery program" means the program instituted under *section 5111.11 of the Revised Code*.

(2) "Permanently institutionalized individual" has the same meaning as in *section 5111.11 of the Revised Code*.

(3) "Person responsible for the estate" means the executor, administrator, commissioner, or person who filed pursuant to *section 2113.03 of the Revised Code* for release from administration of an estate.

(B) The person responsible for the estate of a decedent subject to the medicaid estate recovery program or the estate of a decedent who was the spouse of a decedent subject to the medicaid estate recovery program shall submit a properly completed medicaid estate recovery reporting form prescribed under division (D) of this section to the administrator of the medicaid estate recovery program not later than thirty days after the occurrence of any of the following:

(1) The granting of letters testamentary;

(2) The administration of the estate;

(3) The filing of an application for release from administration or summary release from administration.

(C) The person responsible for the estate shall mark the appropriate box on the appropriate probate form to indicate compliance with the requirements of division (B) of this section.

The probate court shall send a copy of the completed probate form to the administrator of the medicaid estate recovery program.

(D) The administrator of the medicaid estate recovery program shall prescribe a medicaid estate recovery reporting form for the purpose of division (B) of this section. In the case of a decedent subject to the medicaid estate recovery program, the form shall require, at a minimum, that the person responsible for the estate list all of the decedent's real and personal property and other assets that are part of the decedent's estate as defined in *section 5111.11 of the Revised Code*. In the case of a decedent who was the spouse of a decedent subject to the medicaid estate recovery program, the form shall require, at a minimum, that the person responsible for the estate list all of the decedent's real and personal property and other assets that are part of the decedent's estate as defined in *section 5111.11 of the Revised Code* and were also part of the estate, as so defined, of the decedent subject to the medicaid estate recovery program. The administrator shall include on the form a statement printed in bold letters informing the person responsible for the estate that knowingly making a false statement on the form is falsification under *section 2921.13 of the Revised Code*, a misdemeanor of the first degree.

(E) The administrator of the medicaid estate recovery program shall present a claim for estate recovery to the person responsible for the estate of the decedent or the person's legal representative not later than ninety days after the date on which the medicaid estate recovery reporting form is received under division (B) of this section or one year after the decedent's death, whichever is later.

HISTORY: 150 v H 95, § 1, eff. 9-26-03; 151 v H 66, § 101.01, eff. 6-30-05; 152 v H 119, § 101.01, eff. 9-29-07.



PAGE'S OHIO REVISED CODE ANNOTATED
Copyright (c) 2010 by Matthew Bender & Company, Inc, a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH FILE 54 ***
*** ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 ***

**TITLE 51. PUBLIC WELFARE
CHAPTER 5111. MEDICAID PROGRAM**

ORC Ann. 5111.11 (2010)

§ 5111.11. Medicaid estate recovery program

(A) As used in this section and *section 5111.111 [5111.11.1] of the Revised Code*:

(1) "Estate" includes both of the following:

(a) All real and personal property and other assets to be administered under Title XXI of the Revised Code and property that would be administered under that title if not for *section 2113.03 or 2113.031 [2113.03.1] of the Revised Code*;

(b) Any other real and personal property and other assets in which an individual had any legal title or interest at the time of death (to the extent of the interest), including assets conveyed to a survivor, heir, or assign of the individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

(2) "Institution" means a nursing facility, intermediate care facility for the mentally retarded, or a medical institution.

(3) "Intermediate care facility for the mentally retarded" and "nursing facility" have the same meanings as in *section 5111.20 of the Revised Code*.

(4) "Permanently institutionalized individual" means an individual to whom all of the following apply:

(a) Is an inpatient in an institution;

(b) Is required, as a condition of the medicaid program paying for the individual's services in the institution, to spend for costs of medical or nursing care all of the individual's income except for an amount for personal needs specified by the department of job and family services;

(c) Cannot reasonably be expected to be discharged from the institution and return home as determined by the department of job and family services.

(5) "Qualified state long-term care insurance partnership program" means the program established under *section 5111.18 of the Revised Code*.

(6) "Time of death" shall not be construed to mean a time after which a legal title or interest in real or personal property or other asset may pass by survivorship or other operation of law due to the death of the decedent or terminate by reason of the decedent's death.

(B) To the extent permitted by federal law, the department of job and family services shall institute a medicaid estate recovery program under which the department shall, except as provided in divisions (C) and (E) of this section, and subject to division (D) of this section, do all of the following:

(1) For the costs of medicaid services the medicaid program correctly paid or will pay on behalf of a permanently institutionalized individual of any age, seek adjustment or recovery from the individual's estate or on the sale of property of the individual or spouse that is subject to a lien imposed under *section 5111.111 [5111.11.1] of the Revised Code*;

(2) For the costs of medicaid services the medicaid program correctly paid or will pay on behalf of an individual fifty-five years of age or older who is not a permanently institutionalized individual, seek adjustment or recovery from the individual's estate;

(3) Seek adjustment or recovery from the estate of other individuals as permitted by federal law.

(C) (1) No adjustment or recovery may be made under division (B)(1) of this section from a permanently institutionalized individual's estate or on the sale of property of a permanently institutionalized individual that is subject to a lien imposed under *section 5111.111 [5111.11.1] of the Revised Code* or under division (B)(2) or (3) of this section from an individual's estate while either of the following are alive:

(a) The spouse of the permanently institutionalized individual or individual;

(b) The son or daughter of a permanently institutionalized individual or individual if the son or daughter is under age twenty-one or, under *42 U.S.C. 1382c*, is considered blind or disabled.

(2) No adjustment or recovery may be made under division (B)(1) of this section from a permanently institutionalized individual's home that is subject to a lien imposed under *section 5111.111 [5111.11.1] of the Revised Code* while either of the following lawfully reside in the home:

(a) The permanently institutionalized individual's sibling who resided in the home for at least one year immediately before the date of the permanently institutionalized individual's admission to the institution and on a continuous basis since that time;

(b) The permanently institutionalized individual's son or daughter who provided care to the permanently institutionalized individual that delayed the permanently institutionalized individual's institutionalization and resided in the home for at least two years immediately before the date of the permanently institutionalized individual's admission to the institution and on a continuous basis since that time.

(D) In the case of a participant of the qualified state long-term care insurance partnership program, adjustment or recovery required by this section may be reduced in accordance with rules adopted under division (G) of this section.

(E) The department shall, in accordance with procedures and criteria established in rules adopted under division (G) of this section, waive seeking an adjustment or recovery otherwise required by this section if the director of job and family services determines that adjustment or recovery would work an undue hardship. The department may limit the duration of the waiver to the period during which the undue hardship exists.

(F) For the purpose of determining whether an individual meets the definition of "permanently institutionalized individual" established for this section, a rebuttable presumption exists that the individual cannot reasonably be expected to be discharged from an institution and return home if either of the following is the case:

(1) The individual declares that he or she does not intend to return home.

(2) The individual has been an inpatient in an institution for at least six months.

(G) The director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code regarding the medicaid estate recovery program, including rules that do both of the following:

(1) For the purpose of division (D) of this section and consistent with 42 U.S.C. 1396p(b)(1)(C), provide for reducing an adjustment or recovery in the case of a participant of the qualified state long-term care insurance partnership program;

(2) For the purpose of division (E) of this section and consistent with the standards specified by the United States secretary of health and human services under 42 U.S.C. 1396p(b)(3), establish procedures and criteria for waiving adjustment or recovery due to an undue hardship.

HISTORY: C § 5111.33, 139 v H 694 (Eff 11-15-81); 140 v H 291 (Eff 7-1-83); 141 v H 428 (Eff 12-23-86); 143 v H 111 (Eff 7-1-89); RC § 5111.11, 143 v H 822 (Eff 12-13-90); 145 v H 152 (Eff 7-1-93); 146 v H 167 (Eff 11-15-95); 147 v H 215 (Eff 9-29-97); 148 v H 471 (Eff 7-1-2000); 148 v H 313, Eff 8-29-2000; 151 v H 66, § 101.01, eff. 6-30-05; 151 v H 530, § 101.01, eff. 6-30-06; 152 v H 119, § 101.01, eff. 9-29-07.