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USING AHLBORN TO REDUCE A MEDICAID LIEN

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What could be done when the Medicaid lien is so large that it would consume all or a substantial portion of the recovery.

A recent United States Supreme Court case has provided personal injury attorneys with ammunition to reduce a Medicaid lien in a personal injury case so that the payment to the State Medicaid Agency is fair and reasonable. After a series of cases around the country divided on the issue as to whether the State Medicaid Agency may recover from that portion of a settlement not earmarked for past medical expenses the United States Supreme Court decided the issue in the Ahlborn case,^[1] The Court held that federal law requires states to ascertain the legal liability of third parties and to seek reimbursement for medical assistance to the extent of such legal liability. The state is considered to have acquired the rights of the injured party to payment by any other party for such health care items or services. As a condition of Medicaid eligibility, the individual is required to assign to the state any rights to payment for medical care from any third party. The Arkansas statute required that if the lien exceeds the portion of the settlement representing medical costs, satisfaction of the lien requires payment out of proceeds meant to compensate the recipient for damages distinct from medical costs, such as pain and suffering, lost wages, and loss of future earnings.

In the Ahlborn case, the plaintiff was involved in an automobile accident. Medicaid paid \$215,645.30 on her behalf. Plaintiff filed suit for past medical costs and for other items, including pain and suffering, loss of earnings and working time, and permanent impairment of her future earning ability. The case was settled for \$550,000, which was not allocated between categories of damages. The parties stipulated that the settlement amounted to approximately

^[1] 126 S. Ct. 1752.

1/6th of the reasonable value of Ahlborn's claim. The court stated that the federal requirement that states "seek reimbursement for medical assistance *to the extent of such legal liability*" refers to the legal liability of third parties *to pay for care and services available under the plan.*" Here, because the plaintiff received only 1/6th of her overall damages, the right of the state of Arkansas was limited to 1/6th of the past medical claim or \$35,581.47.

The court also held that 42 U.S.C. §1396p(a)(1) prohibits states from imposing liens "against the property of any individual prior to his death on account of medical assistance paid...on his behalf under the state plan." This prevents the state from attaching the non-past medical portion of the settlement. As a result of this ruling, states can assert a Medicaid lien only against that portion of a settlement earmarked for past medical expenses. The state may not recover against non-medical expense claims, such as pain and suffering, loss or earnings and permanent loss of future earnings. Needless to say, it is good practice in a personal injury settlement to make a clear allocation of damages.

Allocation is not only important, but must be fair. As Justice Stevens said in the Ahlborn opinion, "Although more colorable, the alternative argument that a rule of full reimbursement is needed generally to avoid the risk of settlement manipulation also fails. The risk that parties to a tort suit will allocate away the state's interest can be avoided either by obtaining the state's advanced agreement to an allocation or, if necessary, by submitting the matter to a court for a decision."



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