

MSBA ELDER LAW SECTION E-NEWSLETTER
December 22, 2009

E-Newsletter Editorial Staff:

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EDITOR'S NOTE: There will be no E-Newsletter published on 12/29/2009 due to the holiday season. Happy Holidays!

BARG UPDATE: ESTATE OF PERRIN SUBMITTED ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

As previously reported, the Hennepin County Medical Assistance Collection Unit has refused to accept the *Barg* case as the final word on claims against the estates of community spouses who never received medical assistance benefits. In *In the Estate of Richard L. Perrin*, Henn. Co. Dist. Ct., Prob. Div., File No. 27-PA-PR-06-1482, the County argues that *Barg* did not settle liability for medical assistance claims under Minn. Stat. § 519.05, the spousal debt liability statute. The last memorandum was filed with the Court on November 2, 2009, and the parties are now waiting for the Probate Court to issue a decision. Other counties do not appear to be taking Hennepin County's argument too seriously. Many counties are abandoning any *Barg*-type claim. As previously reported, liability for medical assistance benefits under § 519.05 was briefed and argued to the Minnesota Supreme Court as an alternative theory of recovery in the *Barg* case. Under principles of res judicata, the application of § 519.05 should no longer be an open question.

CORRECTION!!
UPDATED FIGURES FOR MINNESOTA'S MINIMUM COMMUNITY SPOUSE RESOURCE STANDARD

Submitted by Laurie Hanson, Esq.

The newly entitled "Sharp Eye Award" goes to Charles Roach, Esq., who caught an error in the previously reported *Minimum Community Spouse Resource Standard* in last week's article entitled "Implications of No Social Security Cost-of-Living Adjustment (COLA) for 2010. The article reported the *Minimum Community Spouse Resource Standard* as \$21,912.00, which is the FEDERAL standard. **MINNESOTA sets a different standard at \$31,094.** Please correct your information accordingly.

The new figures for 2010 are now posted on our website: <http://www.mnbar.org/sections/elder-law/index.asp>. Check it out under "documents and forms."

LATEST ON HEALTH CARE REFORM BILL:

Check out the latest links below for the most up to date information about the bill that is now before the Senate.

Bill Language

House Version: H.R.3962 - Affordable Health Care for America Act
<http://www.opencongress.org/bill/111-h3962/show>

Senate Version: [H.R.3590](#) - Patient Protection and Affordable Care Act (Legislative Vehicle)
<http://www.opencongress.org/bill/111-h3590/text?version=ocas>

Clearinghouses of Information

Kaiser Daily Health Care Policy Report, subscribe to the Report at:
<http://www.kaiserhealthnews.org>

The Hill e-Newsletter, a Congressional newspaper. Sign up for *The Hill News Alerts* at the top left corner of the home page at: <http://thehill.com/>.

News Stories

Health Care Bill Passes Key Hurdle In Senate; 'Ultimate Success' Not Assured
http://www.npr.org/blogs/thetwo-way/2009/12/health_care_bill_passes_key_hu.html

Senate Dems clear hurdle on health care
http://news.yahoo.com/s/ap/us_health_care_overhaul

Democrats clear critical hurdle on path toward passage of Obama health overhaul
http://www.startribune.com/business/79790077.html?elr=KArksLckD8EQDUoaEyqyP4O:DW3ckUiD3aPc:_Yyc:aU1yDEmP:QMDCinchO7DU

GOP assails special provisions in health care bill
http://www.twincities.com/ci_14039304?IADID=Search-www.twincities.com-www.twincities.com

The Senate Health Care Reform Bill -- How Will It Benefit Seniors?
<http://www.naela.org/ViewFullArticle.aspx?ArticleID=401>

Group tallies health bill's benefit for Minnesotans
http://www.startribune.com/business/79465922.html?elr=KArksLckD8EQDUoaEyqyP4O:DW3ckUiD3aPc:_Yyc:aUUsZ

Congress's Long-Term Care Bomb: Another new entitlement that will make future costs explode
<http://online.wsj.com/article/SB10001424052748703499404574562240508080098.html>

2010 ELDER LAW INSTITUTE DATE SET

Mark your calendars for October 7-8, 2010 to attend the Elder Law Institute. Further information will follow closer to the date.

ELDER LAW NEWS

Grandparents fight for rights

<http://www.desmoinesregister.com/article/20091218/NEWS10/912180354/-1/GETPUBLISHED03scripts/Grandparents-fight-for-rights>

Group tallies health bill's benefit for Minnesotans

http://www.startribune.com/business/79465922.html?elr=KArksLckD8EQDUoaEyqyP4O:DW3ckUiD3aPc:_Yyc:aUUsZ

Report says death was due to drug error

http://www.startribune.com/local/79462122.html?elr=KArksLckD8EQDUoaEyqyP4O:DW3ckUiD3aPc:_Yyc:aUUZ

Minnesota AG Goes After Insurance Fraud Schemers

<http://www.dotmed.com/news/story/10760>

Snowbirds could prove costly to state funding

http://www.presspubs.com/articles/2009/12/15/quad_community_press/news/doc4b27e969ce06d388055941.txt

Visiting Aging Parents Over the Holidays: Elder Care Expert Encourages Boomers to Move Beyond Denial

<http://www.eldertube.com/a239673-visiting-aging-parents-over-the-holidays-.cfm>

Facing the loss of Medica's sponsorship, Skyway Senior Center joins many across the state cutting staff, tightening belts as lean times squeeze funding.

<http://www.startribune.com/local/79271107.html?elr=KArksUUUoDEy3LGDio7aiU>

Congress's Long-Term Care Bomb: Another new entitlement that will make future costs explode.

<http://online.wsj.com/article/SB10001424052748703499404574562240508080098.html>

Now: H1N1 vaccine for the rest of us: Anticipating another wave of H1N1 flu later this season, health officials are encouraging more people to get vaccinated even though the number of new cases continues to drop.

<http://www.duluthnewstribune.com/event/article/id/154975/>

MINNESOTA CASES

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The Minnesota Court of Appeals released the following two (2) unpublished opinions on December 15, 2009:

A09-258

In re the Matter of: Hennepin County, Plaintiff, Angela Marie Nelson, Plaintiff, vs. Sean Kyle Brown, Respondent, Kathryn Helgeson, et al., intervenors, Appellants.

WRIGHT, Judge

Appellants challenge the district court's determination that they lack standing to seek child custody as interested third parties, arguing that the district court erred by requiring more than a prima facie case for standing at the prehearing stage. Respondent maintains that, because appellants' conduct has unnecessarily prolonged this litigation, he is entitled to conduct-based attorney fees on appeal. We reverse and remand.

The opinion is available at: <http://www.lawlibrary.state.mn.us/archive/ctapun/0912/opa090258-1215.pdf>

A08-2287

Aziz Ansari, Relator, vs. Metropolitan Housing and Redevelopment Authority, Respondent.

ROSS, Judge

Respondent Metropolitan Housing and Redevelopment Authority terminated Aziz Ansari's Section 8 housing benefits after Ansari failed to report subsidy payments that he received as the manager of another Section 8 property. Ansari challenges the termination decision, arguing that he was not required to report the subsidy payments because he received and spent them merely in his capacity as property manager on behalf of the property's landlord. Ansari also contends that the hearing officer relied on grounds that were not included in Ansari's termination notice and failed to consider mitigating factors. Because there is substantial evidence to support the hearing officer's credibility determination rejecting Ansari's claim that he was merely managing the property on someone else's behalf, and because Ansari's due process and other contentions are not persuasive, we affirm.

The opinion is available at: <http://www.lawlibrary.state.mn.us/archive/ctapun/0912/opa082287-1215.pdf>

Unpublished opinions may not be cited except as provided by Minn. Stat. Section 480A.08, Subd. 3 (2008).

STATUTES, REGULATIONS, BULLETINS

DHS BULLETIN #09-25-11: DHS Issues Updated Elderly Waiver (EW) Customized Living (CL) Tools and Rates. Following a recommendation of the Center for Medicare and

Medicaid Services (CMS) for standardizing EW rates across the state, DHS has developed a rate-setting system and tool-kit, available at http://www.dhs.state.mn.us/dhs16_143983, to assist professionals in calculating the EW rate. The following two step process was established for rate-setting: (1) Determine covered customized living component services that the provider wishes to offer and that the lead agency may authorize as part of individual plans for EW recipients; (2) Develop the individual customized living plan and the computation of the rate for the individual. Transition rates will apply until June 30, 2010 for all recipients for whom services are authorized between December 11, 2009 and June 30, 2010. The bulletin, dated December 11, is available at:
http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_147501.pdf.

UPCOMING EVENTS AND CLE PROGRAMS

Elder Law Institute

Video Replays

January 21-22, 2010 – Duluth

Contact Information: <http://www.minncle.org/SeminarList.aspx> or 1 800-759-8840.

Elder Law 2010: Issues and Answers

HCBA Live Seminar

January 28, 2010

Contact Information: <https://www.hcba.org/intus/Event3/event.asp> or 612-752-6600.

Estate Planning in Uncertain Times (including Medical Assistance)

Video Replay

February 12, 2010 - Duluth

Contact Information: <http://www.minncle.org/SeminarList.aspx> or 1 800-759-8840.

Estate Planning for the Final Years of Life

Lorman Teleconference

January 20, 2010, 1:00 p.m.

Contact information: <http://www.lorman.com/teleconference/teleconference.php?pid=207029> or 1-866-878-9329.

ELDER LAW SECTION ACTIVITIES

VULNERABLE ADULT COMMITTEE MEETING: The next meeting of the Vulnerable Adult Committee will be Thursday, January 28, 2010 at Noon, at the offices of Pearson, Randall, Schumacher & LaBore, P.A., 100 S. 5th Street, Suite 1025, Minneapolis, 612.767.7500. Contact co-chairs Ken LaBore at klabore@prslegal.com or Joel Smith at joel@koslaw.com for more information.

MA COMMITTEE MEETING: The next MA Committee meeting will be at 3:30 p.m. on Tuesday, February 16, 2010, at the MAO Offices, 2021 E. Hennepin, Suite 200, Minneapolis. Topics for the meeting may be submitted to MA Committee Chair, Cathryn Reher, at

creher@mnelderlaw.com, or faxed to 952-542-9201. For directions, or to attend by phone, please contact Tracie Fenske with Long, Reher & Hanson, P.A. at 952-929-0622.

GOVERNING COUNCIL MEETING: The next meeting of the Elder Law Section Governing Council will be at 3:30 p.m. on Friday, February 19, 2010, at the MAO offices, 2021 E. Hennepin, Suite 200, Minneapolis. All members are welcome to attend. To participate by phone, please contact Vicki McIntyre at vmcintyre2@yahoo.com or 612-722-8572.

GREATER MINNESOTA COMMITTEE: Please contact Bonita Kallestad at 1-320-235-9600 or bkallestad@westernlegal.org with issues you would like the Greater Minnesota Committee to address. Also contact Bonita if you would like to serve on the Greater Minnesota Committee.

DON'T FORGET THAT THE ELDER LAW WEBSITE IS A GREAT RESOURCE.

Here's what you can find on the Website: Links to the DHS Health Care Programs Manual, the DHS Bulletin on treatment of uncompensated transfers, the Minnesota Bankers Association Compliance Bulletin on Powers of Attorney, legislative summary; Practice Links to organizations such as NAELA, ABA Commission on Law and Aging, Links to Federal and State Government Agencies, Statutes, and Regulations; Meeting Notices, Listings of Officers and Council Members, Section Bylaws, and more.

To access the ELDER LAW SECTION WEBSITE

Click here: <http://www2.mnbar.org/sections/elder-law/index.asp>.

Please send E-Newsletter contributions by noon on Saturday of each week to Suzy Scheller at sscheller@prslegal.com.

If you do not wish to receive this E-Newsletter, send your request to be removed from the mailing list to Elyse Farnsworth at efarnsworth@statebar.gen.mn.us.

Current and prior E-Newsletters are posted on the website for the MSBA Elder Law Section and are available at: <http://www2.mnbar.org/sections/elder-law/newsletters.asp>.