

# Elder Law Newsletter

▲ A Publication of the Minnesota State Bar Association Elder Law Section ▲

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Spring 2007

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## UPDATE ON MINNESOTA SUPREME COURT CASE: IN RE ESTATE OF FRANCIS E. BARG

by *Thomas J. Mainz, Esq.*

The Minnesota Court of Appeals filed a decision In Re Estate of Francis E. Barg, Docket Number A05-2346, on October 17, 2006. The Honorable Harriet Lansing wrote the opinion. The Court held "For purposes of obtaining reimbursement under Minnesota's estate recovery statute, Mille Lacs County is entitled to a claim against Francis Barg's estate for Dolores Barg's one-half interest in the joint tenancy property obtained during the marriage and transferred to Francis Barg." The Court applied the principles of real property law to determine the outcome. The Bargs were joint tenants in their homestead real estate. Dolores Barg received medical assistance and had transferred her one-half interest in the joint tenancy property to her husband Francis Barg, who never received medical assistance. Dolores predeceased Francis. The Court determined Dolores Barg's estate "retained a joint-tenancy interest in the homestead at the time of her death" even though she had transferred that interest prior to her death. The Court relied on Gullberg for the propositions that this transfer was by "other arrangement" and that under the optional definition of estate under federal law Dolores Barg had "some interest" in the homestead after its conveyance. The Court rejected the County's argument Dolores Barg had a one hundred per cent interest in the joint tenancy real property and rejected the Estate's argument (and the District Court decision) that Dolores Barg had a life estate value. Both arguments were advanced under the standards set forth in Gullberg. The Court of Appeals remanded the case to the District Court to enter a judgment for \$60,400 (one-half of the stipulated value of the joint tenancy real property at that time of

Francis E. Barg Update, continued on page 2

### Elder Law Newsletter Editorial Committee

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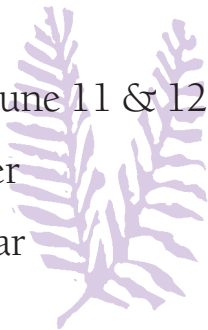
## UPCOMING EVENT

### The 33rd Annual Probate & Trust Law Section Conference

Monday & Tuesday, June 11 & 12

Saint Paul RiverCenter

By Minnesota State Bar  
Association CLE ▲



## Southern Minnesota Regional Legal Services Project Description: A NEW INITIATIVE FOR LOW INCOME SENIORS

SMRLS has launched a new innovative, two-fold initiative for serving economically disadvantaged seniors. The initiative enlists volunteer attorneys to provide free community legal education for low-income seniors. The initiative works directly with organizations that provide services and/or interact with economically disadvantaged seniors. Once identified, these organizations complete a needs assessment, which helps them to identify legal topics that may be of interest to their particular group of seniors, such as health care directives, predatory lending, grandparent rights and Identity, Theft, and Fraud. We then arrange to have a volunteer attorney provide free community legal education on the requested topic. Optional PowerPoint slides/outlines, for review/preparation, are available for volunteer attorneys that present at community education workshops. The second phase of the initiative coordinates with individual attorneys and law firms to provide telephone “advice-only” to low income seniors.

The positive response to this effort from numerous organizations as well as law firms throughout the metro area has been simply overwhelming. Since this new initiative began 3½ months ago, we have presented several community education events, and have scheduled community workshops through winter 2007.

In an effort to increase awareness of this exciting new initiative, we are planning the First Annual Senior Legal Fair, to be held October 2007 (specific date forthcoming) at the St. Paul Rivercentre. We anticipate approximately 500 participants. We are planning five morning breakout sessions on various topics. Lunch will be provided. In the afternoon, we will provide for one-on-one advice clinics where seniors will have the opportunity to meet for approximately 15 minutes with a volunteer attorney. The event will also include give-aways, free blood-pressure checks, flu shot, and other benefits for the attending seniors. Transportation will be available from various pick-up points in Dakota, Ramsey, Washington, Carver and Scott Counties.

If you are interested in volunteering as either a presenter for a community workshop, accepting advice-only calls, and/or participating in the First Annual Senior Legal Fair in October 2007 please contact:

Kathie L. Battle Sayles, Esq. Co-Lead  
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### Francis E. Barg Update. continued from front cover

Francis Barg’s death—although the appellate court recited that was the value at the time of Dolores Barg’s death).

By petition dated November 16, 2006 Mille Lacs County requested the Minnesota Supreme Court review this decision. The two legal issues as framed by the County are:

1. “To what extent, if any, does federal law actually limit the scope of estate recovery under Minnesota law when an otherwise valid Medical Assistance (MA) claim is filed in the estate of a surviving spouse containing former marital property in order to recover benefits paid on behalf of the predeceased spouse?”
2. “What is the extent of a non-titled spouse’s interest in marital property before dissolution or death?”

The Estate responded to the petition on December 4, 2006 by first requesting that the Court not accept this case for appeal because the Court of Appeals’ narrow decision finally determined the claim against the parties’ homestead. The Estate then requested that if the Court accepts review the Estate’s conditional issue is whether Minnesota may recover medical assistance paid to a predeceased recipient spouse from the estate of a community spouse, in effect revisiting the Gullberg opinion. ▲

**Editor’s Note:** *The Minnesota Supreme Court did grant review of this case. The parties are currently preparing their court briefs in anticipation of oral arguments.*

# Reprinted from *Washington Weekly*: CONGRESS TINKERS WITH DRA

## President Expected to Approve Changes

Shortly before closing business for good, the 109th U.S. Congress last week passed the *Tax Relief and Health Care Act of 2006*, H.R. 6111 (Tax Relief bill), which includes several “technical corrections” to the Medicaid provisions of the Deficit Reduction Act of 2005, P.L. 109-171 (DRA), and will subject Medicare and Supplemental Security Income (SSI) enrollees to the citizenship documentation requirements previously placed on Medicaid enrollees by the DRA. Because the bill contains, among other things, extensions for many tax breaks supported by the White House, President Bush is expected to sign the bill.

The bill fixes a “mistake” in the DRA’s Medicaid citizenship documentation provision. This provision, codified at 42 U.S.C. §1396b(x), requires states to verify the citizenship of Medicaid enrollees through documentation. The original DRA language exempted “aliens” who are Medicare enrollees or Supplemental Security Income (SSI) recipients from this requirement. However, CMS declared in its interim final rule on the requirement that this was a “scrivener’s error,” and that Congress intended to exempt *citizen, not alien* Medicare or SSI beneficiaries from the requirement. See NSCLC *Washington Weekly*, July 7, 2006. In the Tax Relief bill, Congress confirms CMS’ interpretation by changing “alien” to “individual declaring to be a citizen . . .” Congress also extended the exemption to citizens receiving Social Security Disability Insurance benefits, and to individuals receiving child welfare services or adoption or foster care assistance under Parts B and E of title IV of the Social Security Act (“Grants to States for aid and services to needy families with children and for child welfare services”).

Also clarified by the Tax Relief bill is that Medicaid recipients whose incomes are below 100 percent of the Federal Poverty Level are not subject to the DRA’s new cost sharing provisions and may not be denied services by providers for failure to pay a copayment. With regard to the DRA’s transfer-of-asset changes, only one very minor correction was made. The DRA added 42 U.S.C. §1396p (c) (1) (F) (i) to the Medicaid Act, which requires that Medicaid long-term care applications name the state as the remainder beneficiary of annuities in which they have an interest, in an amount equal to what the enrollees receive in coverage from the state. The DRA language stated that state remainder rights were equal to the amount paid on behalf of an “annuitant,” and the Tax Relief bill replaced this with “institutionalized individual.” This is more a clarification than a substantive change.

Aside from the DRA corrections, the Tax Relief bill would extend to June 30, 2007, the transitional medical assistance program (TMA), which generally provides “transitional” Medicaid coverage to individuals who lose their eligibility because of increased income from work.

The bill can be read on the Library of Congress’ Thomas website, <http://thomas.loc.gov>. Type “h.r. 6111” in the “Search Bill Text” box. The final version is the “Engrossed Amendment as Agreed to by the House” (Section 1, Division B, Title IV is where the Medicaid provisions are located). For more information, please call Gene Coffey in NSCLC’s D.C. office. ▲

## OFFICIAL NOTICE OF ANNUAL MEETING OF THE ELDER LAW SECTION OF THE MSBA

The annual meeting of the Elder Law Section of the MSBA will take place at the Saint Paul RiverCentre at 1:15 on Tuesday June 12, 2007 (after the end of the Probate and Trust Law Institute). The below slate of governing council members plus any other appropriate business of the Section will be addressed at this meeting.

### Minnesota State Bar Association Elder Law Section Governing Council Slate of Candidates for 2007 – 2008 Term

#### Serving First Year of Two-Year Term:

Name	Term Ends	Previously Held By	Officer
Jill Adkins	June 2009	Thomas R. O'Connell	
Vicki M. Ahl	June 2009	Same	Treasurer*
Mark L. Anderson	June 2009	Same	
Stuart C. Bear	June 2009	Same	
Cynthia J. Capin	June 2009	Same	
Kathleen M. Eveslage	June 2009	Same	
Richard Hawke	June 2009	Same	
Margaret Grathwol	June 2009	New	
Sharon K. Kirts	June 2009	Same	
Monica Lewis	June 2009	Same	
Vicki McIntyre	June 2009	Barbara F Goldstein	
Robert L. Russell, III	June 2009	Same	
David R. Stahlman	June 2009	Gina Nelson	
Thomas Wilson	June 2009	Same	
Douglas Debner	June 2009	Same	

Governing Council Slate, continued on page 5

### Serving Second Year of Two-Year Term:

Name	Term Ends	Previously Held By	Officer
Jacob J. Baker	June 2008	Same	
Linda L. Bogut	June 2008	Same	
Kimberly Dayton	June 2008	Same	
[Leave Vacant]	June 2008	Joel Mullen	
Jonathan A. Dyrud	June 2008	Same	
Lori L. Guzman	June 2008	Same	
Laurie A. Hanson	June 2008	Same	Chair*
Bonita A. Kallestad	June 2008	Same	
Lynn R. Lindsay	June 2008	Same	
Cathryn D. Reher	June 2008	Same	
David Rephan	June 2008	Same	
Suzanne M. C. Sandahl	June 2008	Same	
Jeffrey W. Schmidt	June 2008	Same	Vice Chair*
Jennifer L. Wright	June 2008	Same	Secretary*
Julian J. Zweber	June 2008	Same	

### Student Member(s):

Name	Term Ends	Law School
John Kantke	Ends June 2008	St. Thomas
Lauren Demmer	Ends June 2008	William Mitchell
Joel Button	Ends June 2008	William Mitchell

\*All officers will be serving a first, one-year term. Officers are limited to serving only two consecutive terms.

# January 2007 MINNESOTA HEALTH CARE PROGRAMS FOR SENIORS

## INCOME AND ASSET ELIGIBILITY FIGURES

by Long, Reher & Hanson, P.A. (Updated January and July each year)

Program	Income		Assets	
	SINGLE	COUPLE	SINGLE	COUPLE
<b>Medical Assistance (MA) 100% FPG**</b> <b>75% FPG (Method B spenddown standard)</b> Full MA benefits, pays Medicare Part A and Part B premiums, deductibles, co-insurance and co-pays.	\$817 \$613	\$1,101 \$826	\$3,000	\$6,000
<b>Qualified Medicare Beneficiary (QMB) (100% FPG)</b> Pays Medicare Part A and Part B premiums, co-pays, and deductibles.	\$837*	\$1,121*	\$10,000	\$18,000
<b>Service Limited Medicare Beneficiary SLMB (120% FPG)</b> Pays Medicare Part B premiums	\$1,000*	\$1,341*	\$10,000	\$18,000
<b>QI - 1 (135% FPG)</b> Pays Medicare Part B premiums. Limited funding.	\$1,123*	\$1,506*	\$10,000	\$18,000
<b>Medicare Prescription Drug Subsidy for Part D Participants</b> with income at 150% FPG or below, on a sliding basis, are eligible for reduced or no monthly premiums, deductibles and co-payments depending upon income and resources. See POMS Section HI 03001.010, HI 03001.010 and HI 03020.055, <a href="http://www.ssa.gov">www.ssa.gov</a> .	<b>Full subsidy: ≤ 135%</b>		\$6,000	\$9,000
	\$1,103	\$1,486		
	<b>75% subsidy: ≤ 140%</b>			
	\$1,143	\$1,541		
	<b>50% subsidy: ≤ 145%</b>			
\$1,185	\$1,651	\$10,000	\$20,000	
<b>20% subsidy: ≤ 150%</b>		\$10,000	\$20,000	
\$1,225	\$1,650	\$10,000	\$20,000	

## ELDERLY WAIVER (EW)

Pays full MA benefits plus home and community based services for people who are 65 years of age or older who require the level of care provided in a nursing facility.

### Income Eligibility

There are two income limits for EW. People with incomes equal to or less than the Special Income Standard (SIS) (currently \$1,869) are eligible for EW without an MA spenddown. They must contribute any income over the maintenance needs allowance (\$816) and other applicable deductions to the cost of services received under EW. This is known as the waiver obligation. All other MA services are provided without a spenddown. A recipient whose income is equal to or less than \$816 is eligible for EW and MA without a spenddown. A recipient who has income greater

than \$1,869 must spend down his or her income in excess of the current MA medically needy income standard of \$613. Excess income must be applied towards the cost of EW services and other medical services needed by the applicant. The applicant is responsible for paying bills used to meet the spenddown. A community spouse is entitled to a spousal income allowance as explained above.

### Asset Eligibility

The rules are the same as those for MA for Nursing Home Residents (see page 7).

\* \$20 disregard included  
\*\* FPG is Federal Poverty Guidelines

## ALTERNATIVE CARE (AC)

Minnesota funded program pays home care and community services. Recipient may have to pay a fee depending upon recipient's assets and income. A recipient is eligible if income and assets would be inadequate to fund a nursing facility stay for more than 135 days subject to a limit of \$21,586. Spousal impoverishment rules apply.

## MEDICAL ASSISTANCE FOR NURSING HOME RESIDENTS

In addition to full MA benefits, pays for home health care and for skilled and custodial care in a nursing home.

### Income Eligibility

A nursing home resident must pay all of his/her income to the nursing home less allowable deductions including a \$82 personal needs allowance (\$90 for certain veterans and spouses of veterans) and an allowance for payment of medical insurance premiums. Further, a community spouse is entitled to a spousal allocation to bring his or her income to \$1,650/month (or up to \$2,541 if shelter costs are greater than \$495 per month). MA pays the rest of the nursing home cost. Community spouse keeps all his/her income.

### Asset Eligibility

In addition to exempt and unavailable assets, a nursing home resident may have only \$3,000. If married, the community spouse keeps \$28,589 or 1/2 (one-half) of all available assets owned by either spouse up to \$101,640. Assets must be reduced properly. Current penalty for uncompensated transfers is \$4,438 per month.

## 2007 SOCIAL SECURITY ADMINISTRATION BENEFITS

### Retirement Survivors Disability Insurance (RSDI)

**Maximum Benefit:** \$2,116/month (Age 65 and 10 months)

**Retirement Earnings Limit for the Year Turning Age 65:**  
\$34,440/year‡

**Retirement Earnings Limit for Years Before Age 65:**  
\$12,960/year‡‡

‡ Applies only to months prior to attaining full retirement age. \$1 in benefits will be withheld for every \$3 in earnings above the limit.

‡‡ \$1 in benefits withheld for every \$2 in earnings above the limit.

### Medicare

#### Part A Premium:

- \$410 for less than 30 quarters of Medicare-covered employment;
- \$226 for 30-39 quarters of Medicare-covered employment;
- \$0 for 40 quarters or more of Medicare-covered employment

#### Part A Skilled Nursing Facility Co-Payment:

- Up to \$124 per day for days 21-100

#### Part A In patient Hospital Deductible:

- A total of \$992 per spell of illness for hospital stay of 1-60 days;
- \$248 per day for days 61-90;
- \$496 per day for days 91-150;
- All costs for each day beyond 150 days.

#### Part B Premium:

- \$93.50/month

#### Part B Deductible:

- \$131 per year (Plus 20% of the Medicare-approved amount for services after the deductible has been met.)

### Supplemental Security Income (SSI)

#### Individual:

- \$623/month (Asset Limit: \$2,000)

#### Couple:

- \$934/month (Asset Limit: \$3,000) ▲