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The Department of Social and Health Services violates Federal law by attempting to obtain control of the Decedent's Social Security and Veteran's Disability benefits. The Decedent's residence is protected from seizure by Washington State law.

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AS SIGNMENTS OF ERROR

Errors

1. The trial court erred in finding that the Decedent's Social Security Benefits and Veterans Disability benefits are not immune from seizure under Federal law.
2. The trial court erred in finding the Decedent's real property is not immune from seizure under Washington state law.

STATEMENT OF THE ISSUES

Can The Department of Social and Health Services seize A Decedent's Social Security Benefits and Veterans Disability Benefits when the department is not the beneficiarie's payee?

Can The Department of Social and Health Services seize the Decedent's Residence if they do not comply with WAC 388-855-0035(2)?

STATEMENT OF THE CASE

The Department of Health and Human Services filed a lawsuit against the personal representative of Wayne

LeRoy McPherson's estate, his daughter, Diana Marie call when she denied the Department's claims based on federal exemption . RP 3

Wayne McPherson's received United States Veterans Disability benefits, Social Security benefits and a small amount of income from property . He received approximately \$2963.99 per month, \$2,193.00 in monthly veterans benefits, \$495.00 in Social Security benefits and Cook Inland Dividends which averaged \$275.99 per month. RP 7 The decedent received money from no other sources. RP 7-8

At the time of his death the decedent had real property decedent, a residence he lived in, and cash assets of approximately \$110,000 derived largely from social security and veteran administration payments. RP 11 .

The funds in the decedents estate are Veteran's Benefits, and that the second largest source of funds in the estate are from Social Security benefits. RP 7

The decedent received no other money, other than the Cook Inland Dividends. The exempt funds were not commingled with non-exempt funds to the extent that their character could not be determined.

The decedent 's guardian was Pacific Guardianship

Services . The funds from his Veteran's Disability benefits and Social Security benefits were put in a bank account by the guardian. RP 7
DSHS is attempting to use the decedent's Veterans Disability benefits and Social Security benefits to pay for his care.

ARGUMENT I

Standard of Review.

“The interpretation of a federal statute is a question of law that an appellate court reviews de novo.”

129 Wn. App. Kolbeson v. Department of Social and Health Services. 129 Wn. App. 194 (2005)

The Decedent's Social Security benefits are protected from seizure. They are immune from process. The Federal Government confers the benefits upon recipients and the intent of Federal law is that they not be subject to garnishment. The supreme court said:

"Section 407(a) unambiguously rules out any attempt to attach Social Security benefits. “ .

Washington Courts make a distinction between direct benefits and indirect benefits. In situations where the benefits go directly to DSHS, not to the recipient, DSHS has been allowed to collect from Social Security funds.

DSHS cites cases where the State did collect debt from Social Security benefits. However, in those cases, the benefits did not go directly to the recipient. The benefits went to DSHS as representative payee.

In this case, the benefits did not go to the state. The benefits went directly into the recipients' bank account. In Gossett v. Czech, 581 F.3rd 891 (9th Cir 2009) the 9th Circuit held that 38U.S.C. does not prohibit direct payment of benefits for ongoing, the says if the case has not involved direct payments they would have been prohibited.

[6] We note that our holding in Nelson v. Heiss is unaltered. If the reimbursements Czech made to the Hospital with Gossett's benefits had been made in pursuit of debt collection activities, they would still be prohibited by Section 5301(a)(1). See 271 F.3d at 894-96.

The distinction is between a direct payment to the beneficiary, and where DSHS is the representative payee. If DSHS is the payee, there is no levy of the benefits. A "levy" usually involves some type of judicial authorization. If DSHS is the payee, no levy is necessary. In this case, DSHS was not the representative payee. In order to take control of the funds from the

beneficiary, DSHS uses the court procedure. This is exactly what the 42 U.S.C. & 407 proscribes. The key distinction between this case and the cases the Plaintiff uses to support its position like Kolbeson, Kolbeson v. Department of Social and Health Services 129 Wn. App. 194, control over the property did not pass from one person to another in those cases. In this case, possession and control would have to pass from the beneficiary to DSHS. DSHS is not the representative payee in this case. The vehicle for that transfer is the legal system. That is prohibited by Federal law.

The case that the plaintiff cites says Nelson v. Heiss is unaltered by this decision- Nelson v. Heiss holds : We have followed that lead(the lead of the United states Supreme court) and have declared that a state cannot pay for a prisoner's maintenance costs by attaching his Social Security benefits. Brinkman v. Rahm, 878 F.2d 263, 265-66 (9th Cir.1989). And we have gone on to declare that a district court properly ordered that Social Security benefits "are exempt from legal process and cannot be used to pay the plaintiff's cost of care without the patient's knowing, affirmative and unequivocal consent." Crawford v. Gould, 56 F.3d 1162, 1167 (9th Cir.1995).

The Plaintiff cites Kolbeson 129 Wn. App. At 129 for the proposition that the “decedents Estate is obligated to pay the cost of what amounted to approximately seven years of treatment and care at Western.” “With respect to the financial assessment, Kolbeson has an existing liability under RCW 43.20B.330. But DSHS has possession and control of the benefits as the representative payee.

Thus, “control over property [did not] pass[] from one person to another in order to discharge or secure discharge” of that liability. Keffeler II, 537 U.S. at 385, 123 S.Ct. 1017.”

The Court held that since DSHS was the payee for patient and already had control of his assets, no legal process was necessary to obtain that control. Thus the legal process prohibition of 42 U.S.C. Section 407 (a) did not apply. No court action was necessary for the Department to obtain the funds because the Department had been designated the payee. Obviously, the fact that (1) in this case the Plaintiff filed a lawsuit (2) they served a lawsuit and (3) we are in court proves, beyond doubt that court action is necessary for the Department to obtain the funds in this case.

In all of the cases the plaintiff cites to support its position, DSHS was the payee. The money went directly to DSHS in those cases. Those courts reasoned that the prohibition against legal process did not apply because the money went directly to DSHS. That is not true in this case.

In this case benefits went directly to the beneficiary through the payee, Pacific Guardianship Services. The payee was not DSHS DSHS did not have control of the estate at the time of death. They were not in control of the decedent's assets during his life. DSHS cannot take control of the estate without use of the legal process. Use of the legal process is prohibited by federal law. "DSHS controls his benefits, subject to the regulations governing their use.

These regulations expressly authorize the representative payee to apply benefits toward the cost of institutional care. 20 C.F.R. § 404.2040(b). Thus, DSHS used benefits, in its full possession and control, for Kolbeson's current maintenance without judicial intervention.

This action is not prohibited by 42 U.S.C. § 407(a)."

Koebeson 129 Wn. App. The United States Supreme Court addressed this issue specifically. In Philpott v. Essex County Welfare Bd., 409 U.S. 413, 93 S.Ct. 590, 34 L.Ed.2d 608 (1973), the United States Supreme Court described the broad protection § 407 affords Social Security benefits. Philpott declared that § 407 barred New Jersey's attempt to reach federal Social Security disability benefits in order to reimburse the state for public assistance expenditures made on behalf of the petitioners.

State welfare recipients were made to execute an agreement, as a condition precedent to receiving welfare benefits, to reimburse the county welfare board with any funds that came into their possession.

When Philpott refused to turn his SSA disability benefits over to the welfare board the latter sued to enforce the agreement.

The Supreme Court held § 407 on its face prohibited New Jersey from reaching the petitioner's federal disability payments, explaining, "We see no reason why a State, performing its statutory duty to take care of the

needy, should be in a preferred position as compared with any other creditor.” Philpott, 409 U.S. at 416, 93 S.Ct. 590 In a case where a state sued to obtain benefits, the Supreme Court of the United States said no. Musselman, 132 Wn. App. 848 another case the Plaintiff cites has nothing to do with federal benefits. It held that a DSHS determination of financial responsibility may exceed the patient's ability to pay. “We hold that, on these facts, DSHS properly assessed Musselman's daily rate even though her accrued costs exceeded her total available assets on the date DSHS issued the Financial Notice.” Musselman 32 Wn. App. 841;134 P.3d 248. The case does not say courts in this state may ignore federal law. The Musselman court did say DSHS may not take the patient's home: “The regulations exempt real property if it is the actual residence of the patient or the patient's spouse and/or dependents. But if two doctors believe the patient has no reasonable possibility of returning to her home, the patient's real property becomes an available asset.” The plaintiff in this case is attempting to attach the family home in violation of WAC 388-855-0035(2). The anti alienation provision, evinces Congress's intent to remove Social Security benefits from the reach of creditors employing

legal process. Dionne v. Bouley, 757 F.2d 1344, 1355
(1st Cir.1985).

As the United States Supreme Court noted in Bennett v. Arkansas, 485 U.S. 395, 397, 108 S.Ct. 1204, 99 L.Ed.2d 455 (1988), any state law contrary to § 407(a) runs afoul of the Supremacy Clause.

Accord Crawford v. Gould, 56 F.3d 1162, 1165 (9th Cir.1995). The federal district court enjoined DSHS from seizing benefits over which it did not have possession and control to discharge any liability.

Brinkman, 878 F.2d at 266.

The intention of the Federal law is that Social Security payments be exempt from seizure.

This case involves direct benefits and DSHS using the court process to seize the Social Security benefits. This is prohibited by federal law. There is a specific anti-attachment provision in the statute: “Sec. 207. [42 U.S.C. 407] (a) The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or

other legal process, or to the operation of any bankruptcy or insolvency law.”

D~~S~~HS cannot attach Social Security benefits without violating the anti-attachment section of the Act.

The plaintiff argues without authority that interest on the benefits is not exempt. There is no case law or statutory law that supports this position.

The Funds do not lose their exempt status once the beneficiary dies? The funds were exempt when they were received by the beneficiary. There is no law which says

they revert back to non-exempt status if the beneficiary dies. Therefore, the decedent's heirs are entitled to the exempt funds. These funds are protected by Federal law.

The intent of the Federal law is to

ARGUMENT II

The Decedent's Veteran's Disability benefits are immune from Seizure under Federal Law.

Veterans' service-connected disability compensation is intended to financially compensate a military veteran disabled in the line of duty. This compensation is not an asset, or property, and should not be used to calculate a veteran's net worth. Disability compensation is awarded

to a veteran that has lost some/all physical or mental ability to work, or maintain a daily routine. Veteran's disability compensation is tax exempt and not classified as 'income' by the IRS. VA disability compensation is non-transferable and cannot be awarded to a third party under any legal process whatsoever. Even after the veteran has deposited these funds into their personal bank account they are federally protected from attachment or seizure. Disability compensation belongs solely to the disabled veteran that has suffered the disability and heirs. In this case DSHS is attempting to attach the Veteran's exempt benefits to pay for his care in a state hospital.

The fact that the benefits went into a bank account does not change their exempt status. "Disability benefits paid by the United States to an incompetent veteran and deposited by his committee or guardian in an account in a federal savings and loan association are exempted from attachment by 38 U.S.C. § 3101(a) when the deposits are readily available as needed for support and maintenance, actually retain the qualities of money, and are not permanent investments." Porter v. Aetna Cas. & Sur. Co., 370 U.S. 159 (1962)

The Veterans Disability benefit should not have been

used to determine the decedent's ability to pay. The Veterans Disability Protection Act illustrates the process state courts are to follow when veterans are involved: : Whenever a veteran comes before a state judicial body the following procedures should prevent violation of the federal statute. (1) It should be ascertained whether or not the person is a veteran; (2) There should be a determination as to whether the veteran has been awarded military disability pay; (3) determine what percentage and what amount of the veterans total pay is military disability pay; (4) exclude any portion of the veteran's military disability pay from the adjudication of any claim; (5) continue with the original action.

Title 38 §5301. Non assignability and exempt status of benefits (a) (1) Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to

claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter of this title, or of servicemen's indemnity. (Chapter 19) (2) For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving a benefit check and has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited. (3) (A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, except as provided in subparagraph (B), and including deposit into a joint account from which such

other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited. (B) Notwithstanding subparagraph (A), nothing in this paragraph is intended to prohibit a loan involving a beneficiary under the terms of which the beneficiary may use the benefit to repay such other person as long as each of the periodic payments made to repay such other person is separately and voluntarily executed by the beneficiary or is made by preauthorized electronic funds transfer pursuant to the Electronic Funds Transfers Act 15 U.S.C. 63. (C) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited and is void from its inception. (b) This section shall prohibit the collection by setoff or otherwise out of any benefits payable pursuant to any law administered by the Secretary and relating to veterans, their estates, or their dependents, of any claim of the United States or any agency thereof against (1) any person other than the indebted beneficiary or the beneficiary's estate; or (2) any beneficiary or the beneficiary's estate except amounts due the United States by such beneficiary or the beneficiary's estate by reason of overpayments or illegal payments made under

such laws to such beneficiary or the beneficiary's estate or to the beneficiary's dependents as such. If the benefits referred to in the preceding sentence are insurance payable by reason of yearly renewable term insurance, United States Government life insurance, or National Service Life Insurance issued by the United States, the exemption provided in this section shall not apply to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness is in the form of liens to secure unpaid premiums or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits.

The Statute protects transfer to heirs upon death. The prohibition protects from collection money that goes to the heirs of the beneficiary. There is no exception for money due DSHS. "If Congress want to create exceptions in the language, it knew how to do so."

Ne Ison v. Heiss 271 F3rd 891 (2001) Federal law controls Social Security benefits and Veteran's Disability benefits.

ARGUMENT III

Social Security benefits and Veteran's Disability

benefits are controlled by Federal law.

A. State and local governments enact no laws regarding the governing of military disability benefits. Federal Law controls the area.

Article VI, § 2, of the United States Constitution provides that the "Constitution, and the Laws of the United States ... shall be the supreme Law of the Land." This Supremacy Clause essentially means that the national government, in exercising any of the powers enumerated in the Constitution, must prevail over any conflicting or inconsistent state exercise of power." Any state law which attempts to exercise control over funds exempted by federal law is preempted by federal law. The manifest intent of the anti-prohibition provisions is that benefits be exempt from seizure. There is Federal law in this area and Federal law controls the area.

DSHS is attempting to attach funds exempted by federal law. If the decedent's total monthly income is \$2,963.99 per month and \$2,193.00 comes from Veteran's benefits, most of the money in the estate is from Veteran's benefits. The Benefits went to the guardian. The only evidence presents suggests the

primary source of funds for the decedent came from the Veteran's Administration. Therefore, the primary source of money in the estate came from the Veteran's administration. The Plaintiff can present no legal authority to attach even the interest on these benefits. The Department has to prove none of the money it is attempting to attach flows from the Veteran's Administration. 3.

Social Security Law Pension is also not subject to State law Federal law forbids creditor access to Social Security benefits.

42 U.S.C. § 407(a) provides: The right of any person to any future payment under this subchapter shall not be transferable or

Bennett v. Arkansas, 485 U.S. 395, 108 S.Ct. 1204, 99 L.Ed.2d 455 (1988)

The federal preemption doctrine is a judicial response to the conflict between federal and state legislation. When it is clearly established that a federal law preempts a state law, the state law must be declared invalid. The section of law which is the substance of this bill that has been law in effect since

the it was enacted by the Twentieth Congress, Session
1, CH 55 in 1828, codified by United States
Code, Title 38, § 5301. The beginning paragraph (a)(1)
codifies the essence of the statute by
demonstrating the non assignability and exempt status of
a service members military disability benefits
by stating,
“Payments of benefits due or to become due under any
law administered by the Secretary
shall not be assignable except to the extent specifically
authorized by law, and such payments made to,
or on account of, a beneficiary shall be exempt from
taxation, shall be exempt from the claim of
creditors, and shall not be liable to attachment, levy, or
seizure by or under any legal or equitable
process whatever, either before or after receipt by the
assignable, at law or in equity, and none of the moneys
paid or payable or rights existing under this subchapter
shall be subject to execution, levy, attachment,
garnishment, or other legal process, or to the operation
of any bankruptcy or insolvency law.
Money from Veteran's Disability and Social Security is
beyond the reach of state law. state and local
governments enact no laws regarding the governing of

miLitary disability benefits, any laws which attempt to control those funds are preempted by Federal Statutes. There is no dispute that the decedent received care from the Department of Social and Health Services. However, the fact of his receiving care does not entitle DSHS to funds specifically exempted by federal law.

ARGUMENT IV

The Decedent's home is exempt from seizure under state law.

The plaintiff's attempt to seize the family home violates state regulations. in this case is attempting to attach the family home in violation of WAC 388-855-0035(2). "The regulations exempt real property if it is the actual residence of the patient or the patient's spouse and/or dependents. But if two doctors believe the patient has no reasonable possibility of returning to her home, the patient's real property becomes an available asset." The decedent's residence was the family home. There is no evidence that any doctors at Western State Hospital found no possibility that he would return to the home.

CONCLUSION

The Trial Court committed two errors below. This court should reverse on both points. The Department of Social and Health Services should not be allowed to seize the decedent's Social Security benefits or his Veteran's Disability benefits.

Second, this court should find the decedent's real property is also exempt from seizure by the department.

Respectfully Submitted this 23 day of September,
2011

A handwritten signature in black ink, appearing to read 'Hari L. Alipuria', written over a horizontal line.

Hari L. Alipuria, WSBA#26899

Attorney for Diana Call

State of Washington
COURT

11 SEP 25 PM 4:21

STATE OF WASHINGTON

BY _____

DEPUTY

NO. 42085-6-II

IN THE COURT OF APPEALS, DIVISION II

OF THE STATE OF WASHINGTON

IN RE THE ESTATE OF WAYNE LEROY MCPHERSON

DIANA MARIE CALL Appellant/Defendant

THE DEPARTMENT OF SOCIAL AND HEALTH
SERVICES

Respondent/Plaintiff

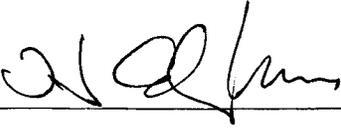
PROOF OF SERVICE

I Certify that today I served counsel Justin Farmer by sending
through ABC legal Messenger Service the Following documents:

Appellant's Amended Opening Brief

This Proof of Service .

September 23, 2011



Hari Alipuria WSBA# 26899
Attorney for DIANA MARIE CALL