

NO. 42085-6-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

IN RE THE ESTATE OF WAYNE LEROY MCPHERSON

DIANA MARIE CALL,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

This case involves the unlawful rejection of a Department of Social and Health Services' (Department) creditor's claim. Diana Maria Call is the Personal Representative of the Estate of Wayne Leroy McPherson. After Ms. Call rejected, without legal basis, the Department's creditor's claim, the Department timely filed suit, seeking allowance of its creditor's claim. During summary judgment arguments, the Department clearly set forth evidence establishing that it was owed \$325,590.13 for the cost of Wayne Leroy McPherson's (Decedent) more than 7 years of institutional treatment and care at Western State Hospital (Western State). In response to the Department's Motion for Summary Judgment, Ms. Call provided only conjecture and unsupported legal conclusions to validate her denial of the Department's creditor's claim. When presented with the Department's undisputed facts, the trial court granted summary judgment in favor of the Department, correctly finding that the Department's creditor's claim should be allowed in full. This Court should affirm the trial court's summary judgment decision allowing the Department's creditor's claim in full.

II. STATEMENT OF THE ISSUE

Did the trial court properly grant the Department's motion for summary judgment allowing the Department's \$325,590.13 creditor's claim where (1) the Department filed its claim in a timely manner and

provided undisputed evidence of the amount owed to the Department at the time of the Decedent's death and (2) Ms. Call provided no legal basis for rejecting the Department's creditor's claim?

III. STATEMENT OF THE CASE

Diana Maria Call is the Personal Representative of the Estate of Wayne Leroy McPherson (Estate). She is also his daughter. At the time of his death in June of 2007, the Decedent had received over \$1,000,000 in Medicaid assistance from the Department, of which \$325,590.13 remained due. CP at 26, 87 (Declaration of Colleen Snider). From May 1996 to December 2004, the Department paid the cost of institutional treatment and care on behalf of the Decedent while he resided at Western State. CP at 21. During the period of time that the Decedent received treatment, the Department received over \$140,000 in payments from the Decedent's guardian, which came from interest income and other private sources, and wrote-off over \$700,000 of the Decedent's debt. CP 21-87.

On February 25, 2008, Ms. Call, as Personal Representative of the Estate, filed and served a Notice to Creditors, giving creditors 30 days to timely file claims against the Estate. CP at 91, 161-162 (Declaration of Justin D. Farmer). Two days later, the Department served Ms. Call with a copy of its \$325,590.13 creditor's claim for the cost of the Decedent's treatment and care at Western State. CP at 91, 164.

The Department subsequently filed a Motion for Rescission of Nonintervention Powers and requested that all moneys held by the Decedent's guardian and Ms. Call be deposited into the Pierce County Superior Court's registry. The Department's motion was granted on March 28, 2008. CP at 92, 166-67. On April 3, 2008, Pacific Guardianship Services deposited \$114,636.78 into the Pierce County Superior Court's registry. CP at 92, 169-70.

On June 25, 2008, without explanation or legal basis, Ms. Call filed a rejection of the Department's creditor's claim, stating, in pertinent part, that:

3. I am hereby **REJECTING** the Creditors [sic] Claim; filed by REBECCA R. GLASGOW, of The Attorney General of Washingtons' [sic] Office filed on behalf of Western State Hospital.

CP at 92, 172. Two days later, Ms. Call filed a creditor's claim on her own behalf in an amount "[t]o be determined." CP at 92, 174.

Based on Ms. Call's rejection of its claim, the Department filed suit in Pierce County Superior Court on July 18, 2008. CP at 92. In her answer, Ms. Call admitted that the Decedent was a patient at Western State from May 2, 1996 to December 16, 2004. CP at 92.

On April 15, 2011, the trial court considered the Department's motion for summary judgment to allow the Department's creditor's claim. CP at 198. The trial court granted the Department's motion on April 22,

2011, finding that the notice the Department provided to the Decedent's guardian established the Estate's financial responsibility for treatment in the amount of \$325,590.13; that there was no dispute as to whether the Decedent received care at Western State between May 2, 1996 and December 16, 2004; that the Department had timely and properly filed its creditor's claim and suit against Ms. Call to allow the claim; that Ms. Call failed to timely respond to the Department's motion; and that Ms. Call provided insufficient evidence to support her assertions that the Department's creditor's claim could not be allowed because estate assets were exempt. CP at 198-201 (Order Granting the Department's Motion for Summary Judgment, April 22, 2011). On May 5, 2011, Ms. Call timely initiated this appeal.

IV. ARGUMENT

A. Standard of Review

Appellate courts review summary judgment orders *de novo*, engaging in the same inquiry as the trial court. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004). Summary judgment is proper if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). This court should view all facts in the light most favorable to the nonmoving party. *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154

Wn.2d 16, 26, 109 P.3d 805 (2005). Summary judgment is appropriate only if reasonable persons could reach but one conclusion from all the evidence. *Id.* at 26.

B. The Trial Court Acted Properly When It Allowed The Department's Timely Filed, And Meticulously Supported, Creditor's Claim

1. Ms. Call Could Not Dispute That The Decedent Received Care While Continuously Residing At Western State Hospital Between May 2, 1996, And December 16, 2004

The Department provided Pacific Guardianship Services, Ms. Call, and the trial court with meticulously documented, and undisputed, evidence of the costs associated with pharmaceuticals, immunizations, medical tests, and other services, such as doctor's fees, psychotherapy, and mental health treatment, provided to the Decedent during his more than seven and a half years of treatment at Western State.

Ms. Call does not dispute the liability established by the Department, but rather asserts that the Department's creditor's claim should not be allowed because the property subject to probate is allegedly exempt from attachment under Federal law. CP at 177. However, Ms. Call's argument is fundamentally flawed. This court need not consider the Estate's assets when it makes a determination of the validity of the Department's creditor's claim, instead this court need only consider whether the Department (a) timely filed its creditor's claim; (b) timely filed suit to allow its claim after Ms. Call's rejection; (c) had legal basis to file such a claim; and (d) provided sufficient evidence to establish the

\$325,590.13 creditor's claim. RCW 11.40.051(1)(a); RCW 11.40.100(1); RCW 43.20B.080.

2. The Department Properly Filed Its Creditor's Claim Against The Decedent's Estate

Federal and State law mandate that the Department seek to recover medical assistance and state-funded long-term care costs paid on behalf of a deceased recipient from the recipient's "Medicaid estate," which includes probate and non-probate assets as defined by RCW 11.02.005. 42 U.S.C. § 1396p; RCW 43.20B.080(1). In addition, the Department can recover from the estate of a deceased patient when cost of care at a state hospital is still outstanding. RCW 43.20B.330. Although there is not a limitations period on collecting the debt for the cost of care, the Department must comply with the time limits for filing a creditor's claim against an estate. RCW 43.20B.360. To effectuate this recovery, the Department must abide by the laws of Washington that govern recovery against an estate. RCW 11.40.051(1)(a) sets forth the specific time requirement for filing a creditor's claim as follows:

If the personal representative provided notice under RCW 11.40.020 and the creditor was given actual notice as provided in RCW 11.40.020(1)(c), the creditor must present the claim within the later of: (i) Thirty days after the personal representative's service or mailing of notice to the creditor; and (ii) four months after the date of first publication of the notice[.]

Ms. Call filed the Notice to Creditors on or about February 25, 2008. CP at 91, 160. The Department filed and presented its \$325,590.13

creditor's claim against the Estate on February 27, 2008. CP at 91, 164. Because the Department filed its creditor's claim against the Decedent's Estate well within the 30 days called for by RCW 11.40.051(1)(a), the Department's creditor's claim presented no genuine issue of material fact with regard to timeliness.

3. The Department Timely Filed Suit In The Trial Court In Response To Ms. Call's Rejection Of The Department's Creditor's Claim

If the personal representative of an estate rejects a timely filed creditor's claim, then the creditor must bring suit within thirty days after notification of the rejection or be forever barred. RCW 11.40.100(1).

Ms. Call rejected the Department's creditor's claim on June 25, 2008. CP at 92, 172. The Department filed suit in the superior court on July 18, 2008. CP at 92. Again, the Department acted well within the 30 day statutory period. Therefore, there can be no dispute that the Department timely filed suit in response to Ms. Call's rejection of the Department's creditor's claim.

4. The Department Is Obligated Under Title 43.20B RCW To Seek Recovery, Including Filing Creditor's Claims, Against A Decedent's Medicaid Estate

RCW 43.20B.330 provides that patients at state mental institutions are liable for the cost of their own treatment and care to the extent that they are able to pay. In pertinent part, this statute provides:

Any person admitted or committed to a state hospital for the mentally ill, and their **estates and responsible relatives are liable for reimbursement to the state of the costs of hospitalization** and/or outpatient services, as computed by

the secretary, or his designee, in accordance with RCW 43.20B.325: PROVIDED, That such mentally ill person, and his or her estate, and the husband or wife of such mentally ill person and their estate shall be primarily responsible for reimbursement to the state for the costs of hospitalization and/or outpatient services; and, the parents of such mentally ill person and their estates, until such person has attained the age of eighteen years, shall be secondarily liable.

RCW 43.20B.330 (emphasis added). Thus, patients of Western State must reimburse the Department for the expense of their treatment and care if they are able to do so. *Musselman v. Dep't of Soc. & Health Servs.*, 132 Wn. App. 841, 134 P.3d 248 (2006) (holding that, in the context of services provided to the mentally ill, all persons committed to Western State are liable for reimbursement to DSHS for the costs of their hospitalization); *Kolbeson v. Dep't of Soc. & Health Servs.*, 129 Wn. App. 194, 118 P.3d 901 (2005) (holding that notice of financial responsibility from the Department stating that patient was liable to pay for his hospital stay did not constitute illegal "levy" within meaning of Social Security Act).

To establish a patient's liability, the Department must determine: (a) the cost of treatment provided to the patient; and (b) the patient's ability to pay. RCW 43.20B.335 states, in pertinent part:

The department is authorized to investigate the financial condition of each person liable under the provisions of RCW 43.20B.355 and 43.20B.325 through 43.20B.350, and is further authorized to make determinations of the ability of each such person to pay hospitalization charges and/or charges for outpatient services, in accordance with the provisions of RCW 43.20B.355 and 43.20B.325 through 43.20B.350, and, for such purposes, to set a standard as a basis of judgment of ability to pay, which standard shall be

recomputed periodically to reflect changes in the costs of living, and other pertinent factors, and to make provisions for unusual and exceptional circumstances in the application of such standard. . . .

[T]he department shall adopt appropriate rules and regulations relating to the standards to be applied in determining ability to pay such charges, the schedule of charges pursuant to RCW 43.20B.325, and such other rules and regulations as are deemed necessary to administer the provisions of RCW 43.20B.355 and 43.20B.325 through 43.20B.350.

To fulfill these statutory obligations, the Department annually publishes a schedule of charges for services rendered at Western State. See RCW 43.20B.325, 335; Chapter 388-855 WAC. Charges for a patient's cost of treatment and care are determined annually in accordance with RCW 43.20B.325 and "are to be based on the actual cost of operating such hospitals for the previous year, taking into consideration" many factors including, inter alia, overhead expenses and staff salaries. RCW 43.20B.325. In addition, under RCW 43.20B.340, the Department is required to notify the patient, or the patient's guardian, of its determination regarding the patient's ability to pay by personal service or certified mail, returned receipt requested. A person is responsible for reimbursing the state if the state complies with RCW 43.20B.340's requirements for a finding of responsibility, and the person does not appeal the finding of responsibility within 28 days. *See id.*

Ms. Call does not claim that the Department failed to comply with RCW 43.20B.340. In fact, Ms. Call has *never* disputed that the Department properly issued a Notice of Finding of Responsibility on

July 30, 1996, and that because it did not receive an appeal from the Decedent, his wife, or Pacific Guardianship Services, their right to appeal on timeliness grounds has been waived. See CP at 176-87; *Musselman*, 132 Wn. App. at 848.

Under RCW 43.20B.330, when the Decedent died, the responsibility to pay for the expenses incurred at Western State transferred to his Estate. The Decedent's Estate is obligated to pay the cost of what amounted to approximately seven years of treatment and care at Western State. See *Kolbeson*, 129 Wn. App. at 199; See also *Musselman*, 132 Wn. App. at 847. The Department acted properly by filing a creditor's claim in an attempt to recover from the Decedent's Medicaid Estate.

5. The Department Clearly Established That The Decedent Was Liable For \$325,590.13 In Costs Related To His Treatment And Care At Western State Between March 1996 And December 2004

The basis for the Department's creditor's claim is thoroughly grounded in the record. CP at 20-87. The billing statements in the record provide a precise and detailed picture of the Decedent's liability for the care he received at Western State. CP 33-35, 40, 47, 52-56, 61, 66, 71, 72, 77-83, 85-87. For instance, the billing statement summary and reconciliation worksheets kept by the Department detail the charges and produced a total liability of \$1,228,708.72, which is broken down as follows: \$1,185,875.62 for room and board; \$7,858.08 for ancillaries; and \$34,975.02 for Fee for Service treatments. CP at 75-83, 87. Subtracted from the total liability owed are payments, which include the following:

Medicare payments of \$28,520.72 and private party payments of \$31,480.93. CP at 87.

In addition, the Department, in its discretion, chose to write-off certain charges incurred for the treatment and care of the Decedent at Western State under an "exception to policy," referred to on the billing statements as "EP write-offs," in the amount of \$700,545.95. CP at 87. The Department also received payments from the Decedent's guardian that totaled \$142,570.99. CP at 87.

Presented with these numbers, there is only one possible conclusion: the value of the Department's claim is \$325,590.13. This conclusion follows logically when the payments received from the Decedent's guardian, the Medicare payments, and the private party payments, together with the EP write-offs, are all subtracted from the total liability. When taken together, the total liability less the payments received and EP write-offs adds up to \$325,590.13. Therefore, the value of the Department's claim presents no genuine issue of material fact and the trial court did not err by granting the Department's summary judgment motion.

C. Federal And State Law Does Not Preclude The Department From Collecting From The Estate of The Decedent Because None Of His Property Is Immune Under 38 U.S.C. § 5301(a)

1. The Decedent's Real Property Does Not Have Statutory Immunity Under 38 USC § 5301(a) Or WAC 388-885-0035

Ms. Call argues that the Estate's real property is exempt from attachment and creditors' claims because it was purchased primarily with

Veterans' benefits. Br. of Appellant at 9-10; CP at 177-78. Ms. Call provides no support for this misplaced legal argument.

The Veterans' Benefits Act (VBA) limits the availability of veterans' benefits for the payment of certain types of claims. 38 U.S.C. § 5301(a). The nonassignability and exempt status of veterans' benefits is described in 38 U.S.C. § 5301(a), which provides, in pertinent part, that:

Payments of benefits due . . . a beneficiary . . . 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.

However, in *Protter v. Tennessee*, 290 U.S. 354, 54 S. Ct. 138 (1933), the Supreme Court held that benefit payments that lose the "quality of moneys" also lose the statutory exemption from taxation (and creditors' claims); see also *Lawrence v. Shaw*, 300 U.S. 245, 248, 57 S. Ct. 443 (1937). The Supreme Court remarked:

We see no token of a purpose to extend . . . immunity to permanent investments or the fruits of business enterprises. Veterans who choose to trade in land or in merchandise, in bonds or in shares of stock, must pay their tribute to the state. If immunity is to be theirs, the statute conceding it must speak in clearer terms than the one before us here.

Protter, 290 U.S. at 357. The Supreme Court, in *Lawrence*, went on to clarify that "deposits that assume the character of investments . . . lose immunity accordingly." *Lawrence*, 300 U.S. at 248. In a subsequent opinion, *Carrier v. Bryant*, 306 U.S. 545, 59 S. Ct. 707 (1939), the

Supreme Court provided even further explanation regarding the statutory immunity:

[38 U.S.C. § 5301(a)] grants exemption from taxation, claims of creditors, attachment, levy or seizure under any legal process whatever. The things exempted are 'payments of benefits' due or to become due either before or after receipt by the beneficiary.

Investments purchased with money received in settlement of benefits are not such payments due or to become due. Accordingly, giving the words employed in their ordinary meaning, the notes and bonds in question are not exempted by [§ 5301(a)]. It left them, like other property, subject to taxation, claims of creditors, and legal process.

Carrier, 306 U.S. at 547; see also *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 161, 82 S. Ct. 1231 n.3 (1962) (“[B]enefits invested in property [are] also nonexempt from creditor actions, since they [are] not ‘payments of benefits’ due or to become due and thus [do] not fall within the initial immunizing language.”); *McIntosh v. Aubrey*, 185 U.S. 122, 22 S. Ct. 561 (1902) (holding that real estate purchased with pension money was subject to execution and sale at the suit of a creditor of the pensioner).

Ms. Call also relies on WAC 388-855-0035(2) for the argument that “plaintiff’s attempt to seize the family home violates state regulation.” Br. of Appellant at 20-21. Ms. Call’s argument is without merit. State regulation does provide that, in determining a patient’s liability for costs of care and hospitalization, the patient’s home “shall not be considered an

available asset” if the property “serves as the principle dwelling and actual residence of the patient, the patient’s spouse, and/or minor children and disabled sons or daughters.” WAC 388-855-0035(2). Here, the exemption does not apply because the Department is not determining a patient’s liability: Wayne Leroy McPherson is deceased and the home is not serving as the principle dwelling and actual residence of the patient, the patient’s spouse, and/or minor children and disabled sons or daughters. The Department asserted a creditor’s claim for recovery pursuant to Title 43.20B RCW, Ms. Call rejected that claim, and the Department filed suit to protect its interest under state law. RCW 11.40.051(1)(a); RCW 11.40.100(1); RCW 43.20B.080. Ms. Call has never disputed that the Department properly issued a Notice of Finding of Responsibility on July 30, 1996. Because the Department did not receive an appeal from the Decedent, his wife, or Pacific Guardianship Services, their right to appeal on timeliness grounds has been waived. See CP at 176-87; *Musselman*, 132 Wn. App. at 848.

Even if the Estate’s real property was purchased in whole – or in part – with Veterans’ benefits, Veterans’ benefits lose the exemption afforded them under 38 U.S.C. § 5301(a) when the funds are used to purchase, inter alia, real property. Because Ms. Call admits that the Decedent converted his Veterans’ benefits into a permanent investment - real property – the moneys lost the statutory immunity against creditor’s claims and the Department can seek reimbursement from the real property accordingly. CP at 178.

2. Upon The Death Of The Decedent Both The Funds Deposited With The Trial Court, And Any Interest Accrued On Those Funds, Lost Their Statutory Immunity Against Creditor's Claims

The VBA clearly protects a veteran's receipt of benefits and affords security for his or her family during his lifetime. *Gossett v. Al Czech*, 581 F.3d 891 (9th Cir. 2009). However, where a veteran's benefits are commingled with interest or funds from non-exempt sources, the statutory protections of 38 U.S.C. § 5301(a) are likely to be afforded only to those funds that are "reasonably traceable" to the benefits received and deposited. *See NCNB Fin. Servs. v. Shumate*, 829 F.Supp. 178, 180 (W.D. Va. 1993), *cert. denied*, 515 U.S. 1161, 115 S. Ct. 2616, 132 L. Ed.2d 859, (1995).

And while Washington Courts have yet to address whether the interest that accrues on accumulated veterans benefits retains the statutory immunity from creditors' claims, the plain language of 38 U.S.C. § 5301(a) and (b), and analogous case-law regarding federal pension benefits, suggests that interest does not retain the statutory protections of 38 U.S.C. § 5301(a). Section 5301(a) clearly exempts only "payments of [Veterans'] benefits due or to become due" from creditor's claims, while Section 5301(b) prohibits "collection by setoff or otherwise out of any benefits payable" to a beneficiary. Nothing in the statutory language suggests that Congress intended for this exemption to extend beyond the payment of Veterans' benefits, and the use of those benefits by the beneficiary, to any interest that might attach to benefits received and accumulated. When considering similar language that exempted federal

pension benefits from taxation and creditors' claims, the Supreme Court of Iowa found "no authority for exempting to the pensioner the interest and interest upon interest derived from investments of pension money." *Appanoose Cnty. v. Henke*, 223 N.W. 876, 878 (1929).

Furthermore, while Washington Courts have yet to address whether "moneys paid or payable" to a veteran during his lifetime retain the statutory immunity from creditor's claims after death, the vast majority of cases suggest that, upon the death of the veteran, the funds do not retain the statutory protection of 38 U.S.C. § 5301. *Infra*. This determination turns on the interpretation of "moneys paid or payable" and whether moneys previously received but no longer used for the benefit of the veteran, as a result of death, retain statutory protection.

For instance, in *Pagel v. Pagel*, 291 U.S. 473, 54 S. Ct. 497 (1934), the Supreme Court affirmed the decision of the lower court, which determined that the proceeds of a war risk insurance policy constituted an asset of the decedent's estate and was, therefore, subject to the claims of creditors. In *Pagel*, the Supreme Court's reasoning provides guidance as to the reach of former 38 U.S.C. § 454 (1924) – the precursor to 38 U.S.C. § 5301(a) – in regards to statutory immunity. The Supreme Court reasoned, in pertinent part:

The purpose of the exemption . . . is to safeguard to the insured soldier and the beneficiary payments made under the policy to them for their benefit. (internal citations omitted). Upon the death of the insured, the father whom he had designated as beneficiary was...awarded monthly

payments to continue until death. The language of the statute limits the exemption to 'any person whom an award is made.' It is clear that the statute does not extend the exemption beyond the insured and beneficiary . . . 'it cannot be held now that exemption of the fund survives both insured and beneficiary for benefit of the heirs of the former.'

Pagel, 291 U.S. at 476; see also *State v. Monaco*, 81 N.J. Super. 448, 195 A.2d 910 (1963) (holding funds from federal veterans' pension payable to decedent in his lifetime lost their identity as pension moneys upon his death, and state was entitled to levy upon funds for amount due for care and treatment furnished pensioner in state hospital because exemption of moneys from claims of creditors was lost); *State Dep't of Pub. Welfare v. Wendt*, 94 Ohio App. 440, 116 N.E. 2d 30 (1953) (holding that the amount of a deceased war veteran's accrued disability pension, paid to administrator of his estate by State Welfare Department from moneys deposited while veteran was in state hospital for mentally ill, must be administered as other assets of estate and distributed under state intestate laws, so as to entitle State Welfare Department to payment of its claim for veteran's support and maintenance in such hospital from such fund held by administrator); *In re Buxton's Estate*, 246 Wis. 97, 16 N.W.2d 399 (1944) (former 38 U.S.C. § 454a (1958) exempting war pensions from taxation, creditors' claims, and judicial levy did not apply after death of pensioner for protection of pensioner's heirs or legatees); *In re Fox's Estate*, 62 S.D. 586, 255 N.W. 565 (1934) (war risk insurance money paid to estate of designated beneficiary was not exempt from claims of

beneficiary's creditors); *Andrew v. Colo. Sav. Bank*, 205 Iowa 872, 219 N.W. 62 (1928) (former R.S. § 4747 (38 U.S.C.A. § 54 (1924)), prohibiting legal process against moneys due beneficiaries, merely protected pension funds from demands of creditors of pensioner, who alone had right to assert the exemption); *First Nat. Bank v. Cann's Ex'x*, 247 Ky. 618, 57 S.W.2d 461 (1932) (former 38 U.S.C. § 454 (1924) did not exempt insurance money paid to a deceased soldier's estate from claims of his creditors).

Ms. Call relies on several cases for her assertion that the Department is barred from bringing a creditor's claim against an estate that holds Veteran or Social Security benefits. However, none of the cases relied upon by Ms. Call involve the estate of a beneficiary and whether Veteran and Social Security funds commingled with other assets in the estate lose the protection afforded 38 U.S.C. § 5301 upon the beneficiary's death. See *Washington State Dep't of Soc. and Health Servs. v. Estate of Keffeler*, 537 U.S. 371, 123 S. Ct. 1017 (2003) (in a class action suit brought by children in foster care receiving Social Security benefits, Supreme Court held that state's use of benefits that it received as "representative payee" of foster care children entitled to such payments, in order to reimburse itself for some of its initial expenditures on foster care children's behalf, did not violate provision of the Social Security Act protecting benefits from "execution, levy, attachment, garnishment, or other legal process"); *Philpott v. Essex Cnty. Welfare Bd.*, 409 U.S. 413, 93 S. Ct. 590 (1973) (holding that Social Security Act barred New Jersey

welfare agency from recovering federal disability benefits retroactively paid to the recipient in a lump sum); *Nelson v. Heiss*, 271 F.3d 891 (2001) (in an action brought by a state inmate against corrections officials after a hold was placed on his inmate trust account, the court held that exemption of veteran's benefits under state law precluded officials from placing hold on inmate's account); *Crawford v. Gould*, 56 F.3d 1162 (1995) (in an action brought by patients of California's state hospitals, the court held that Social Security Act's nonassignment provision preempted process used by California to deduct social security benefits from patient's hospital accounts to pay for cost of care and treatment); *Brinkman v. Rahm*, 878 F.2d 263 (1989) (in an action brought by a class of patients involuntarily committed to Washington State mental hospitals, the court held that Social Security Act's nonassignment provision preempted Washington's procedures for seeking reimbursement from patients during their commitment).

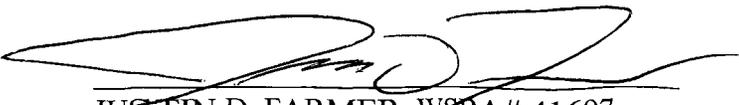
While it is the Department's position that this court need not determine whether the Estate's assets can or cannot be used to pay the Department's creditor's claim, it is clear that the prohibitions set forth in 38 U.S.C § 5301(a) and (b) only protect veterans benefits from the demands of creditors during the beneficiary's lifetime. Upon death, the funds become an estate asset subject to probate, and, as such, subject to a creditor's claim for payment. Therefore, Ms. Call's argument that the Department's creditor's claim should not be allowed based on the type of funds held in probate is without merit.

V. CONCLUSION

The Department timely presented, and filed, its creditor's claim. Upon receipt of notice that Ms. Call had rejected that claim, the Department timely filed suit in Pierce County Superior Court. The Department then clearly established the Decedent's liability in the amount of \$325,590.13. This court should, therefore, affirm the trial court's decision granting the Department's summary judgment motion.

RESPECTFULLY SUBMITTED this 26th day of October, 2011.

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CERTIFICATE OF SERVICE

Justin D. Farmer, states and declares as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. On October 26, 2011, I served a true and correct copy of this **BRIEF OF RESPONDENT and CERTIFICATE OF SERVICE** on the following parties to this action, as indicated below:

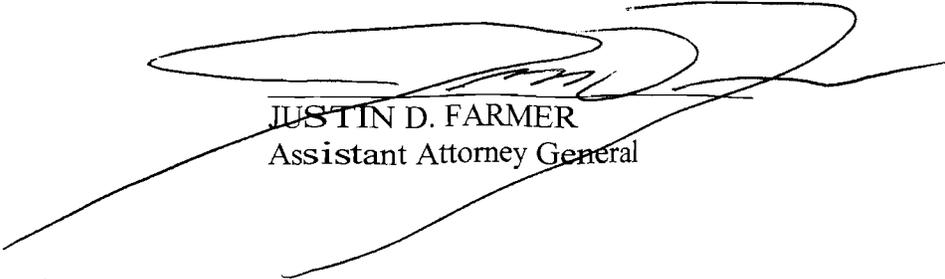
Counsel For Appellant

Hari Alipuria
902 South 10th Street
Tacoma, WA 98405

Hand delivered by: Justin D. Farmer

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 26th day of October 2011, at Tumwater, Washington.



JUSTIN D. FARMER
Assistant Attorney General